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**PART II—Section 2****Bills and Reports of Select Committees on Bills****PARLIAMENT OF INDIA**

The following Report of the Select Committee on the Bill further to amend the Reserve Bank of India Bill, 1934, was presented to Parliament on the 13th December, 1950:—

We the undersigned members of the Select Committee to which the Bill further to amend the Reserve Bank of India Act, 1934, was referred, have considered the Bill and have now the honour to submit this our report with the Bill as amended by us annexed thereto.

*Clause 4.*—Clause (ee) of section 2 of the Reserve Bank of India Act, 1934, introduced by the Adaptation of Laws Order, 1950, will become unnecessary if the Act is extended to Part B States as proposed, and is, therefore, being omitted.

*Clause 6.*—We think that the period during which financial accommodation will be provided by the Reserve Bank should be extended to 15 months. Although 12 months may be normally sufficient for the purpose of financing seasonal agricultural operations, certain crops such as sugarcane take longer to mature and market. There should be no legal bar in the way of the Reserve Bank providing finance for a somewhat longer period than 12 months where this is considered necessary and appropriate.

*Clauses 8, 9 and 10.*—In view of article 283(2) of the Constitution, we think the proper course to adopt would be to make sections 20 and 21 of the Act inapplicable to Part B States and, by the insertion of a new clause, to authorise the Reserve Bank to transact Government business of Part B States on agreement.

We have, therefore, redrafted clauses 8 and 9, and inserted a new clause 10, the subsequent clauses having been renumbered accordingly.

*Clause 13 (original clause 12).*—While considering this clause, it struck us that the definition of "foreign securities" in section 38(6) of the Reserve Bank of India Act, 1934, is too wide and we therefore feel that in consultation with the Reserve Bank of India the matter may be examined and, if found advisable, a suitable amendment may be promoted later.

*Clause 14 (original clause 13).*—It has been represented that the period of two working days prescribed for the submission of returns involves some

practical difficulties by the scheduled banks in obtaining telegraphic information from their branches. We have, therefore, proposed that the period should be extended to 5 days, and in order to provide for the special difficulties of any bank owing to the geographical position of its branches, we have also provided that a provisional return may be submitted pending the submission of a final return within 10 days from the date to which it relates.

Apart from minor drafting changes, opportunity has been taken to clarify that the information in regard to bills purchased and discounted is only in respect of inland bills.

*Clause 15 (new).*—In our opinion the Reserve Bank should be empowered to call for returns from State Co-operative Banks whether such Banks have transactions with the Reserve Bank or not and with this object in view we have omitted the words "with which it has any transaction under section 17" from section 44 of the Act.

*Clause 17 (new).*—This preserves the existing position, namely, that the right of the Imperial Bank to be the sole agent of the Reserve Bank is confined to Part A States and Part C States.

2. The Bill was published in Part II of the Gazette of India, dated the 29th April, 1950.

3. We think that the Bill has not been so altered as to require circulation under rule 77(4) of the Rules of Procedure and Conduct of Business in Parliament, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR

B. R. AMBEDKAR

C. D. DESHMUKH

B. L. SONDHI

BALI RAM BHAGAT

HIRDAY NATH KUNZRU

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\*RANBIR SINGH CHAUDHARI

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\*ARUN CHANDRA GUHA

SYAMNANDAN SAHAYA

M. V. GANGADHARA SIVA

GOKUL LAL ASAWA

\*UPENDRANATH BARMAN

ROHINI KUMAR CHAUDHURI

\*RAMNATH GOENKA

\*K. T. SHAH

NEW DELHI ;

The 18th December, 1950.

\* Subject to a minute of dissent.

## MINUTES OF DISSENT

## I

While expressing my gratitude to the Honourable Minister for Finance in particular and the Members of the Select Committee in general for extending the period of accommodation from twelve months to fifteen months under sub-clause (2) of clause 6 of the Bill in Section 17 of sub-clause (b) of clause (2) of the Act, that the bank may make available for productive finance in the field of agriculture and co-operation, I cannot help stating it that it does not go far to satisfy the demands of finance for Agriculture, not only that for long or medium term, but even that of short term of the growers through the co-operative or schedule banks; which has become much more imperative for the fulfilment of self-sufficiency programmes for food, jute and cotton and specially in the absence of any special institution for financing agricultural finance, such as Agricultural Finance Corporation or other institution which can indirectly be effected such as state or co-operative ware-houses or any scheme for insurance of crops or cattle; to meet the demands of long, medium and short term finance for it and it would have been at least a small consolation and a step in the right direction, if the extension has been made at least for one and a half years if not two years. To be more frank the facilities exist or sought to be brought forward by this measure are only for the marketing of produce and cannot serve the purpose of other agricultural operations.

NEW DELHI;

*The 13th December, 1950.*

RANBIR SINGH CHAUDHARI

## II

The purpose of this amending Bill has been to help agricultural credit. So, we proposed that the Reserve Bank should be allowed to discount deeds and documents arising out of loans and advances made by Scheduled Bank or State Co-operative Bank on the hypothecation of standing crops. The Select Committee after discussing the matter have felt that such operations are already permissible according to Section 17, sub-section (4), clause (d) and also according to Section 17, sub-section (2), clause (b).

We further proposed that as the Rural Banking Enquiry Committee had recommended the establishment of Land Mortgage Banks for long term agricultural finance, debentures of such banks should be included in the list of acceptable securities of the Reserve Bank. On this point also the Select Committee have felt that these are already included.

On both these points, there should be a clear declaration by the Government, and if there are any practical difficulties, those should be removed without delay.

NEW DELHI;

*The 13th December, 1950.*

UPENDRANATH BARMAN

ARUN CHANDRA GUHA

MAHAVIR TYAGI

RAMNATH GOENKA

## III

In order to secure greater facility of financing agricultural operations, I think it is necessary that the Imperial Bank of India, agent of the Reserve Bank of India, should be nationalised. Section 45 of the Reserve Bank of India should be accordingly amended so as to achieve this aim.

NEW DELHI;

*The 13th December, 1950.*

K. T. SHAH

**THE RESERVE BANK OF INDIA (AMENDMENT) BILL, 1950.**

[AS AMENDED BY THE SELECT COMMITTEE.]

(Words underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

BILL No. 38 OF 1950

A Bill further to amend the Reserve Bank of India Act, 1934.

BE it enacted by Parliament as follows:—

**1. Short title and commencement.**—(1) This Act may be called the Reserve Bank of India (Amendment) Act, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

**2. Substitution of "India" for "States" in Act II of 1934.**—In the Reserve Bank of India Act, 1934 (hereinafter referred to as the said Act), unless otherwise expressly provided, for the words "the States", wherever they occur, the word "India" shall be substituted.

**3. Amendment of section 1, Act II of 1934.**—In sub-section (2) of section 1 of the said Act, for the words and letter "Part B States" the words "the State of Jammu and Kashmir" shall be substituted.

**4. Amendment of section 2, Act II of 1934.**—In section 2 of the said Act,—

(i) clause (bb) shall be relettered as clause (e);

(ii) the existing clause (c) shall be relettered as clause (f) and that clause, as so relettered, shall be inserted after clause (e);

(iii) clause (ee) shall be omitted;

(iv) after clause (f), as \*relettered, \*\*the following clause shall be inserted, namely:—

‘(g) the expressions "State Government" and "State Governments", unless otherwise expressly provided, do not include the Government of the State of Jammu and Kashmir.’

**5. Amendment of section 11, Act II of 1934.**—In section 11 of the said Act,—

(a) in sub-section (1), for the words "any other Director" the words "any other Director or any member of a Local Board" shall be substituted;

(b) in sub-section (5), for the words and letters "of a Part A State or a Part C State", the words "of any State" shall be substituted.

**6. Amendment of section 17, Act II of 1934.**—In section 17 of the said Act,—

(1) in clause (1), the words and letter "Part B States" shall be omitted;

(2) in sub-clause (b) of clause (2), for the words "nine months" the words "fifteen months" shall be substituted;

(3) in sub-clause (c) of clause (2), the words and letter "or such securities of Part B States as may be specified in this behalf by the Central Government on the recommendation of the Central Board" shall be omitted;

(4) in clause (4),—

(a) the words and letter "Part B States" shall be omitted;

(b) in sub-clause (d), for the words "which have been transferred" the words "such documents having been transferred" shall be substituted;

(5) for clause (6), the following clause shall be substituted, namely:—

"(6) the issue of demand drafts, telegraphic transfers and other kinds of remittances made payable at its own offices or agencies, the purchase of telegraphic transfers, and the making, issue and circulation of bank post bills;"

(6) in clause (8),—

(a) the words and letter "or such Part B States" shall be omitted;

(b) in the first proviso, for the words "authority or State", in both the places where they occur, the words "or authority" shall be substituted;

(c) the second proviso shall be omitted;

(7) in clause (11),—

(a) the words and letter "or any Part B State" shall be omitted; and

(b) after the words and figures "established under the Industrial Finance Corporation Act, 1948", the words "or the Government of any such country outside India or any such person as may be approved in this behalf by the Central Government" shall be inserted;

(8) in clause (13), for the words "in the shares" the words "in the shares and securities" shall be substituted;

(9) in the second proviso to clause (14), for the words "share capital" the word "capital" shall be substituted.

**7. Amendment of section 19, Act II of 1934.**—For clause (2) of section 19 of the said Act, the following clause shall be substituted, namely:—

"(2) purchase the shares of any banking company or of any other company, or grant loans upon the security of any such shares;"

**8. Amendment of section 20, Act II of 1934.**—In section 20 of the said Act, for the words and letter "the State Governments and such Part B States as may be approved of and notified by the Central Government in the Gazette of India" the words and letter "and the Governments of Part A States" shall be substituted.

**9. Amendment of section 21, Act II of 1934.**—To section 21 of the said Act, the following sub-section shall be added, namely:—

"(5) In this section, the expressions "State Government" and "State Governments" do not include the Government of any Part B State."

**10. Insertion of new section 21A in Act II of 1934.**—After section 21 of the said Act, the following section shall be inserted, namely:—

"21A. Bank to transact Government business of Part B States on agreement.—(1) The Bank may by agreement with the Government of any Part B State undertake—

(a) all its money, remittance, exchange and banking transactions in India, including in particular, the deposit, free of interest, of all its cash balances with the Bank; and

(b) the management of the public debt of, and the issue of any new loans by, that State.

(2) Any agreement made under this section shall be laid, as soon as may be after it is made, before Parliament.

**11. Amendment of section 26, Act II of 1934.**—In sub-section (2) of section 26 of the said Act, for the words "save at an office or agency of the Bank", the words "save at such office or agency of the Bank and to such extent as may be specified in the notification" shall be substituted.

**12. Amendment of section 33 Act II of 1934.**—In sub-section (3) of section 33 of the said Act, for the words and figures "of section 18" the words, figures and brackets "of sub-section (1) of section 18" shall be substituted.

**13. Amendment of sections 36 and 37, Act II of 1934.**—In sections 36 and 37 of the said Act, for the words "sterling securities", wherever they occur, the words "foreign securities" shall be substituted.

**14. Amendment of section 42, Act II of 1934.**—In section 42 of the said Act,—

(1) For sub-section (2), the following shall be substituted, namely:—

"(2) Every scheduled bank shall send to the bank a return signed by two responsible officers of such bank showing—

(a) the amount of its demand and time liabilities and the amount of its borrowings from banks in India,

(b) the total amount of legal tender notes and coins held by it in India,

(c) the balance held by it at the Bank in India,

(d) the balances held by it at other banks in current account and the money at call and short notice in India,

(e) the investments (at book value) in Central and State Government securities including treasury bills and treasury deposit receipts,

(f) the amount of advances in India,

(g) the inland bills purchased and discounted in India,

at the close of business on each Friday, and every such return shall be sent not later than five days after the date to which it relates:

Provided that where Friday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), for one or more offices of a scheduled bank, the return shall give the preceding working day's figures in respect of such office or offices, but shall nevertheless be deemed to relate to that Friday:

Provided further that where the Bank is satisfied that the furnishing of a weekly return under this sub-section is impracticable in the case of any scheduled bank by reason of the geographical position of the bank and its branches, the Bank may allow such bank—

(i) to furnish a provisional return for the week within the period aforesaid to be followed up by a final return not later than ten days after the date to which it relates, or

(ii) to furnish in lieu of a weekly return a monthly return to be sent not later than fourteen days after the end of the month to which it relates giving the details specified in this sub-section in respect of such bank at the close of business for the month".

(2) in sub-section (3A), in clause (a) and in the *Explanation*, the words "managing agent" shall be omitted;

(3) in sub-section (4), for the words "shall be liable to pay to the Central Government or to the Bank, as the case may be, or to each," the words "shall be liable to pay to the Bank" shall be substituted;

(4) in sub-section (5), for the words, brackets and figure "by the Central Government in the case of a failure to make a return under sub-section (2) to the Central Government, or by the Bank with the previous sanction of the Central Government in other cases", the words "by the Bank" shall be substituted;

(5) in clause (a) of sub-section (6), for the words "in any State of India" and "outside the States of India", the words "in India" and "outside India" shall respectively be substituted;

(6) after sub-section (6), as so amended, the following sub-section shall be inserted, namely:—

"(7) The Bank may, for such period and subject to such conditions as may be specified, grant to any scheduled bank such exemptions from the provisions of this section as it thinks fit with reference to all or any of its offices or with reference to the whole or any part of its assets and liabilities".

**15. Amendment of section 44, Act II of 1934.**—In section 44 of the said Act, the words and figures "with which it has any transaction under section 17" shall be omitted.

**16. Amendment of section 51, Act II of 1934.**—In section 51 of the said Act, for the words "Auditor General", the words "Comptroller and Auditor General" shall be substituted.

**17. Amendment of the Third Schedule, Act II of 1934.**—In paragraph 2 of the Third Schedule to the said Act, for the words "the States" the words and letters "Part A States and Part C States" shall be substituted.

The following Bills were introduced in Parliament on the 13th December, 1950:—

#### BILL No. 102 OF 1950

*A Bill to provide for the establishment of State Financial Corporations.*

Be it enacted by Parliament as follows:—

#### CHAPTER I PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Act may be called the State Financial Corporations Act, 1950.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in any State on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "Board" means the Board of directors of the Financial Corporation;

(b) "Financial Corporation" means the Financial Corporation established for the State under section 3;

(c) "industrial concern" means any concern engaged in the manufacture, production, preservation or processing of goods;

(d) "prescribed" means prescribed by rules or regulations made under this Act;

(e) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (II of 1934).

## CHAPTER II

### INCORPORATION OF STATE FINANCIAL CORPORATIONS, THEIR CAPITAL AND MANAGEMENT

**3. Establishment of State Financial Corporations.**—(1) The State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification.

(2) The Financial Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire and to hold property and shall by the said name sue and be sued.

**4. Share capital and shareholders.**—(1) The authorised capital of the Financial Corporation shall be such sum as may be fixed by the State Government in this behalf, but it shall in no case be less than fifty lakhs of rupees or exceed two crores of rupees.

(2) The authorised capital shall be divided into such number of fully paid-up shares as the State Government may determine and shall be issued to the parties mentioned in sub-section (3) at such times and in such manner as that Government may determine.

(3) The Central Government shall, in consultation with the State Government, determine the number of shares for which—

(a) the State Government,

(b) the Reserve Bank,

(c) scheduled banks, insurance companies, investment trusts, co-operative banks or other financial institutions, and

(d) members of the public,

shall, respectively, subscribe:

Provided that the number of shares for which members of the public may be required to subscribe shall in no case exceed twenty-five per cent. of the total number of shares.

(4) Of the capital issued on each occasion, the State Government and the Reserve Bank shall each subscribe for as many shares as the Central Government may, by notification in the Official Gazette, specify in this behalf.



(5) Subject to the other provisions contained in this section, the allotment of shares to the other parties mentioned in sub-section (3) shall be made by the Financial Corporation in such manner as may be prescribed.

(6) If any shares allotted to any of the parties mentioned in clauses (c) and (d) of sub-section (3) remain unallotted, they shall be subscribed for by the State Government, but the State Government may at any time thereafter dispose of the shares so subscribed for to any party who was eligible to subscribe for it in the first instance.

**5. Restrictions on transfer of shares.**—(1) The shares of the Financial Corporation shall not be transferable except to the State Government, the Reserve Bank or any other financial institution recognised in this behalf by the State Government:

Provided that the shares subscribed for by members of the public shall be freely transferable.

(2) Nothing contained in this section shall affect the provisions of sub-section (6) of section 4.

**6. Guarantee by State Government.**—The shares of the Financial Corporation shall be guaranteed by the State Government as to the repayment of principal and the payment of annual dividend at such minimum rate as the State Government may, with the approval of the Central Government, fix by notification published in the Official Gazette at the time of issuing the shares.

**7. Additional capital of the Financial Corporation.**—(1) The Financial Corporation may, in consultation with the Reserve Bank, issue and sell bonds and debentures carrying interest for the purpose of increasing its working capital:

Provided that the total amount of bonds and debentures issued and outstanding and of the contingent liabilities of the Financial Corporation in the form of guarantees given by it or underwriting agreements entered into by it shall not at any time exceed five times the amount of the paid-up share capital and the reserve fund of the Financial Corporation.

(2) Bonds and debentures of the Financial Corporation shall be guaranteed by the State Government as to the repayment of the principal and the payment of interest at such rate as the State Government may, on the recommendation of the Board and with the approval of the Central Government, fix at the time the bonds and debentures are issued.

**8. Deposits with the Financial Corporation.**—The Financial Corporation may accept deposits from the public repayable after the expiry of a period which shall not be less than five years from the date of the making of the deposit, and on such other terms as it thinks fit:

Provided that the total amount of such deposits shall not at any time exceed the paid-up capital of the Financial Corporation.

**9. Management of Financial Corporations.**—The general superintendence and direction of the affairs and business of the Financial Corporation shall be entrusted to a Board of directors, which, with the assistance of an Executive Committee and a managing director may exercise all the powers and discharge all the functions which may be exercised or discharged by the Financial Corporation.

**10. Board of directors.**—The Board of directors shall consist of the following, namely:—

- (a) three directors nominated by the State Government;
- (b) one director nominated by the Central Board of the Reserve Bank;
- (c) one director nominated by the Board of Directors of the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948);
- (d) two directors elected in the prescribed manner from among themselves by the parties mentioned in clause (c) of sub-section (3) of section 4, one of whom shall be elected to represent scheduled banks and the other the remaining financial institutions;
- (e) one director elected in the prescribed manner from among themselves by members of the public who are shareholders of the Financial Corporation;
- (f) one managing director appointed by the State Government, in consultation with the Board, except in the case of the first appointment:

Provided that on the first constitution of the Board the directors referred to in clauses (d) and (e) shall be nominated by the State Government and the directors so nominated shall, for the purposes of this Act, be deemed to be elected directors:

Provided further that all directors of the Board first constituted other than the managing director shall retire at the end of the first year.

**11. Term of office and retirement of directors.**—(1) A nominated director shall hold office during the pleasure of the authority nominating him.

(2) An elected director other than a director deemed to be elected under the first proviso to section 10 shall hold office for three years:

Provided that one out of the three directors so elected shall retire at the end of one year after the first election and another at the end of two years after such election, the directors so to retire being determined by lot.

(3) Notwithstanding anything contained in sub-section (2) an elected director shall continue in office until his successor is elected and shall also be eligible for re-election for not more than two full consecutive terms after the rotation of elected directors has begun.

**12. Disqualifications for being a director.**—No person shall be a director who—

- (a) except in the case of a managing director is a salaried official of the Financial Corporation; or
- (b) is or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or
- (c) is found to be a lunatic or becomes of unsound mind; or
- (d) is or has been convicted of any offence involving moral turpitude.

**13. Removal of director from office.**—The State Government may remove from office the managing director or any other director who—

- (a) is, or has become, subject to any of the disqualifications mentioned in section 12; or

(b) is convicted of an offence involving moral turpitude, or

(c) without excuse sufficient in the opinion of the State Government to exonerate it, is absent without leave of the Board from more than three consecutive meetings of the Board.

**14. Resignation of office by director and filling up of casual vacancies.—**

(1) The managing director or any other director may resign his office by giving notice thereof in writing to the State Government, and, on such resignation being accepted, shall be deemed to have vacated his office.

(2) A casual vacancy in the office of an elected director shall be filled by election and a director so elected shall hold office for the unexpired portion of the term of his predecessor.

(3) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

**15. Chairman of the Board.—**(1) The Chairman of the Board shall be one of the directors, not being the managing director, nominated by the State Government, after considering, except in the case of the nomination of the first Chairman, the recommendation of the Board:

Provided that the nomination of the Chairman for any period other than the first period shall be made only after the vacancies in the office of directors occurring by efflux of time in that period have been filled by nomination or election as the case may be.

(2) The Chairman shall hold office for one year or until his successor is nominated:

Provided that a Chairman shall so long as he remains a director be eligible for re-nomination as Chairman.

**16. Remuneration of directors.—**The directors other than the managing director and not being servants of the State Government shall be paid such fees for attending meetings of the Board and, if they are members thereof, of the Executive Committee, as may be prescribed.

**17. Managing director.—**The managing director shall—

(a) be a whole time officer of the Financial Corporation;

(b) perform such duties as the Board may, by regulations, entrust or delegate to him;

(c) hold office for four years and be eligible for reappointment;

(d) receive such salary and allowances as the Board, with the previous approval of the State Government, may determine.

**18. Executive Committee.—**(1) The Executive Committee shall consist of the managing director who shall be the Chairman of the Committee, and three other directors, chosen as follows:—

(a) two directors elected by the nominated directors, one from among the directors nominated by the State Government, and one from among the directors nominated by the Reserve Bank and the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948);

(b) one director elected by the elected directors.

(2) A director elected to be a member of the Executive Committee shall hold office as such for the rest of his term of office as director for which he is nominated or elected.

**19. Meetings of the Board and Committee.**—(1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulations made under this Act.

(2) All questions at a meeting shall be decided by a majority of votes of the members present, and, in the case of equality of votes, the Chairman or in his absence, any other person presiding, shall have a second or casting vote.

(3) No director shall vote on any matter in which he is interested.

(4) If for any reason the Chairman is unable to be present at a meeting—

(a) of the Board, a director other than the managing director, authorised by the Chairman in writing in this behalf, shall preside at that meeting, or

(b) of the Executive Committee, a member authorised in writing by the managing director shall preside at that meeting.

**20. Powers of Executive Committees.**—(1) Subject to such general or special directions as the Board may from time to time give, the Executive Committee may deal with any matter within the competence of the Board.

(2) The minutes of every meeting of the Executive Committee shall be laid before the Board at the next following meeting of the Board.

**21. Advisory Committee.**—The Financial Corporation may appoint one or more advisory committee or committees for the purpose of assisting the Financial Corporation in the efficient discharge of its functions and, in particular, for the purpose of securing that those functions are exercised with due regard to the circumstances and conditions prevailing in, and the requirements of, particular areas.

**22. Offices and agencies.**—The Financial Corporation shall establish its head office at such place in the State as the State Government may specify and may, with the previous sanction of the State Government, establish offices or agencies in any other place in the State.

**23. Officers and servants of the Corporation.**—The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them.

### CHAPTER III

#### POWERS AND DUTIES OF THE BOARD

**24. General duty of the Board.**—The Board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of industry, commerce and the general public.

**25. Business which Financial Corporations may transact.**—(1) The Financial Corporation may, subject to the provisions of this Act, carry on and transact any of the following kinds of business, namely:—

(a) the guaranteeing on such terms and conditions as may be agreed upon of loans raised by industrial concerns which are repayable within a period not exceeding twenty-five years and are floated in the public market;

(b) the underwriting of the issue of stocks, shares, bonds, or debentures by industrial concerns;

(c) the receipt in consideration of the services mentioned in clauses (a) and (b) of such commission as may be agreed upon;

(d) the retention as part of its assets of any stocks, shares, bonds, or debentures which it may have to take up in fulfilment of its underwriting liabilities: provided that it disposes of the stocks, shares, bonds or debentures so acquired as early as practicable and in any case within a period of seven years from the date of such acquisition;

(e) the granting of loans or advances to, or the subscribing to debentures of, industrial concerns, repayable within a period not exceeding twenty-five years from the date on which they are granted or subscribed to, as the case may be, and

(f) generally, the doing of all such acts and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

(2) No accommodation shall be given under clauses (a) and (e) of sub-section (1), unless it is sufficiently secured by a pledge, mortgage, hypothecation or assignment of Government or other securities, stocks, shares or secured debentures, bullion, movable or immovable property or other tangible assets in the manner prescribed by regulations.

**26. Limit of accommodation.**—The Financial Corporation shall not enter into any arrangement under clauses (a) and (e) of sub-section (1) of section 25 with a single industrial concern for an amount equivalent in the aggregate to more than ten per cent. of the paid-up share capital of the Corporation, but in no case exceeding ten lakhs of rupees.

**27. Power to impose conditions for accommodation.**—(1) In entering into any arrangement under section 25 with an industrial concern, the Financial Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Financial Corporation and securing that the accommodation granted by it is put to the best use by the industrial concern.

(2) Where one of the conditions imposed under sub-section (1) is that a director shall be appointed by the Financial Corporation on the board of directors of the industrial concern to protect the interests of the Financial Corporation, such condition shall be a valid condition notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in any other law for the time being in force or in any instrument relating to the industrial concern.

**28. Prohibited business.**—The Financial Corporation shall not—

(a) accept deposits, except as provided by this Act;

(b) subscribe directly to the shares or stock of any company having a limited liability.

Provided that nothing in clause (b) shall affect the right of the Financial Corporation to acquire any shares, bonds or debentures of a company having limited liability in fulfilment of any underwriting agreement entered into by the Financial Corporation.

**29. Rights of Financial Corporation in case of default.**—(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation may take over the management of the industrial concern, as well as the right to sell and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers of sale and realisation under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the sale had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any property is sold or realised by the Financial Corporation under the provisions of this section, the money which is received by it from such sale or realisation shall, in the absence of any contract to the contrary, be held by the Financial Corporation in trust to be applied, first, in payment of all costs, charges and expenses properly incurred by it as incident to the said sale or realisation and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation takes over the management of an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the owner of the concern.

**30. Power to call for repayment before agreed period.**—Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(f) if for any reason it is necessary, in the opinion of the Board, to protect the interests of the Financial Corporation.

**31. Special provisions for enforcement of claims by Financial Corporation.**—

(1) Where by reason of the breach of any condition of an agreement between the Financial Corporation and an industrial concern, the Financial Corporation becomes entitled to call for the immediate repayment of any loan or advance granted by it before the due date, or where the due date has expired and the

industrial concern fails to repay such loan or advance, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:—

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

**32. Procedure of district judge in respect of applications under section 31.**—(1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the district judge shall pass an *ad interim* order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(2) When the application is for the relief mentioned in clause (b) of sub-section (1) of section 31, the district judge shall grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub-section (1) or sub-section (2), the district judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908), in so far as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may—

(a) confirm the order of attachment and direct the sale of the attached property;

(b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction; or

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause (c), the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs, until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

(9) Any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

(11) The functions of a district judge under this section shall, in a presidency-town, be exercised by the chief judge of the small cause court.

#### CHAPTER IV

##### INVESTMENT OF FUNDS, ACCOUNTS AND AUDIT

**33. Funds of the Financial Corporation.**—(1) Every Financial Corporation shall have its own fund, and all receipts of the Financial Corporation shall be carried thereto and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the fund shall be deposited in the Reserve Bank or with any agency of the Reserve Bank other than a Government treasury or in a scheduled bank in consultation with the Reserve Bank.

**34. Investment of funds.**—The Financial Corporation may invest its funds in the securities of the Central Government or of any State Government.

**35. Disposal of profits.**—(1) The Financial Corporation shall establish reserve fund.

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by banking companies, the Financial Corporation may out of its net annual profits declare a dividend:



Provided that for so long as the reserve fund is less than the paid-up share capital of the Financial Corporation and until there has been repaid to the State Government such sum, if any, as that Government may have paid under guarantee given in pursuance of section 6, or under any guarantee given in pursuance of sub-section (2) of section 7, the rate of such dividend shall not exceed the rate guaranteed by the State Government under section 6.

(3) Notwithstanding anything contained in this section, no dividend paid under this section shall under any circumstances exceed the rate of five per cent. per annum and if, in respect of any financial year after the reserve fund becomes equal to the share capital of the Financial Corporation, there is a surplus in the net profits after declaring a dividend at the rate specified in this sub-section, such surplus shall be paid to the State Government.

**36. General meetings.**—(1) A general meeting (hereinafter referred to as the annual general meeting) shall be held annually at a place in the State within two months from the date on which the annual accounts of the Financial Corporation are closed, and a general meeting may be convened by the Board at any other time.

(2) The shareholders present at the annual general meeting shall be entitled to discuss the annual accounts, the report of the Board on the working of the Financial Corporation throughout the year and the auditor's report on the annual balance sheet and accounts.

**37. Audit.**—(1) The affairs of the Financial Corporation shall be audited by not less than two auditors duly qualified to act as auditors of companies under sub-section (1) of section 144 of the Indian Companies Act, 1913 (VII of 1913), one of whom shall be appointed by the State Government and the other elected in the prescribed manner by the parties mentioned in clauses (c) and (d) of sub-section (3) of section 4, and such remuneration as the State Government may fix shall be paid to the auditors by the Financial Corporation.

(2) Every auditor shall be supplied with a copy of the annual balance-sheet of the Financial Corporation, and it shall be his duty to examine it, together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Financial Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Financial Corporation and may in relation to such accounts examine any director or officer of the Financial Corporation.

(3) The auditors shall make a report to the shareholders upon the annual balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Financial Corporation, and in case if they call for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(4) The State Government may at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Financial Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Financial Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted, or direct that any other examination be made by the auditors, if in its opinion the public interest so requires.

**38. Returns.**—(1) The Financial Corporation shall furnish a statement, in the prescribed form, of its assets and liabilities as at the close of business on the last Friday of each month or, if that day is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), as at the close of business

on the preceding working day to the State Government and to the Reserve Bank within ten days from the date to which the statement relates.

(2) The Financial Corporation shall furnish in the prescribed form to the State Government and to the Reserve Bank once every three months or, as frequently as the State Government or the Reserve Bank may require, a statement showing the classification of its loans and investments and of all loans guaranteed by it and underwriting agreements entered into by it.

(3) The Financial Corporation shall furnish to the State Government and to the Reserve Bank within two months of the close of each financial year a statement in the prescribed form of its assets and liabilities as at the close of that year, together with a profit and loss account for the year, and a report of the working of the Financial Corporation during the year and copies of the said statement, account and report shall be published in the Official Gazette.

## CHAPTER V

### MISCELLANEOUS

**39. Power to give instructions to Financial Corporation on questions of policy.**—(1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government, the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any court.

**40. Declaration of fidelity and secrecy.**—Every director, auditor, officer or servant of the Financial Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

**41. Indemnity of directors.**—(1) Every director shall be indemnified by the Financial Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director shall not be responsible for any other director or for any officer or servant of the Financial Corporation or for any loss or expenses resulting to the Financial Corporation by the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Financial Corporation or by the wrongful act of any person under obligation to the Financial Corporation or by anything done in good faith in the execution of the duties of his office or in relation thereto.

**42. Offences.**—(1) Whoever, in any bill of lading, warehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act, wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Whoever, without the consent in writing of the Financial Corporation, uses the name of the Financial Corporation in any prospectus or advertisement shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this Act otherwise than on a complaint in writing signed by an officer of the Financial Corporation authorised by the Board in this behalf.

**43. Provisions relating to income-tax and super-tax.**—For the purposes of the Indian Income-tax Act, 1922 (XI of 1922), the Financial Corporation shall be deemed to be a company within the meaning of that Act and shall be liable to income-tax and super-tax accordingly on its income, profits and gains:

Provided that any sum paid by the State Government under the guarantee given in pursuance of section 6 or under any guarantee given in pursuance of sub-section (2) of section 7 shall not be treated as the income, profits and gains of the Financial Corporation and any interest on debentures or bonds paid by the Financial Corporation out of such sum shall not be treated as expenditure incurred by it:

Provided further that in the case of any shareholder such portion of a dividend as has been paid out of any such sum advanced by the State Government shall be deemed to be its income from "interest on securities" declared to be income-tax free within the meaning of section 8 of that Act.

**44. Act XVIII of 1891 to apply to the books of the Financial Corporation.**—The Financial Corporation shall be deemed to be a bank for the purposes of the Bankers Books Evidence Act, 1891 (XVIII of 1891).

**45. Liquidation of Financial Corporation.**—No provision of law relating to the winding-up of companies or corporations shall apply to the Financial Corporation, and the Financial Corporation shall not be placed in liquidation, save by order of the State Government and in such manner as it may direct.

**46. Power to apply Act to certain financial institutions in existence at commencement of Act.**—(1) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution in existence at the commencement of this Act which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification.

(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification.

**47. Power of State Government to make rules.**—The State Government may make rules not inconsistent with the provisions of this Act to give effect to the provisions of this Act, and where there is any inconsistency between the rules and the regulations made under this Act, the rules shall prevail.

**48. Power of Board to make regulations.**—(1) The Board may, after consultation with the Reserve Bank and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections;

(b) the manner in which, and the conditions subject to which, the first allotment of the shares of the Financial Corporation shall be made;

(c) the manner in which, and the conditions subject to which, the shares of the Financial Corporation may be held and transferred and generally all matters relating to the rights and duties of shareholders;

(d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(e) the calling of meetings of the Board and of the Executive Committee, fees for attending meetings thereof and the conduct of business thereat;

(f) the manner and terms of issue and repayment of bonds and debentures by the Financial Corporation;

(g) the conditions which the Financial Corporation may impose in granting loans or advances;

(h) the manner of determining the sufficiency of the security taken under sub-section (2) of section 25;

(i) the forms of returns and statements required under this Act,

(j) the duties and conduct of officers and servants and agents of the Financial Corporation;

(k) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation;

(l) the taking over of the management of any industrial concern on a breach of its agreement with the Financial Corporation;

(m) the appointment of *ad hoc* committees for technical and other advice for the purposes of this Act; and

(n) generally, the efficient conduct of the affairs of the Financial Corporation.

(3) All regulations made under this section shall be published in the Official Gazette and shall come into force on such publication.

## THE SCHEDULE

(See section 40)

### DECLARATION OF FIDELITY AND SECRECY

I,.....do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as a director, officer, employee or auditor (as the case may be) of the Financial Corporation and which properly relate to any office or position in the said Financial Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Financial Corporation, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Financial Corporation and relating to the business of the Financial Corporation.

*Signature.*

Signed before me:

## STATEMENT OF OBJECTS AND REASONS

In order to provide medium and long-term credit to industrial undertakings, which falls outside the normal activities of commercial banks, a Central Industrial Finance Corporation was set up under the Industrial Finance Corporation Act, 1948 (XV of 1948). The State Governments wish that similar Corporations should also be set up in the States to supplement the work of the Industrial Finance Corporation. The intention is that the State Corporations will confine their activities to financing medium and small scale industries and will, as far as possible, consider only such cases as are outside the scope of the Industrial Finance Corporation. The State Governments also consider that the State Corporations should be established under a special Statute in order to make it possible to incorporate in the constitution necessary provisions in regard to majority control by Government, guarantee by the State Government in regard to the repayment of principal, and payment of a minimum rate of dividend on the shares, restriction on distribution of profits and special powers for the enforcement of its claims and recovery of dues. Since the incorporation, regulation and winding up of such corporations fall within the purview of Parliament—*vide* Entry No. 43 of the Union List—the State Governments have requested the Government of India to enact the necessary enabling legislation, which is sought to be effected by this Bill.

2. The main features of the Bill are as follows:—

(i) The Bill provides that the State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State.

(ii) The share capital shall be fixed by the State Government but shall not exceed Rs. 2 crores. The issue of the shares to the public will be limited to 25 per cent. of the share capital and the rest will be held by the State Government, the Reserve Bank, scheduled banks, insurance companies, investment trusts, co-operative banks and other financial institutions.

(iii) Shares of the Corporation will be guaranteed by the State Government as to the repayment of principal and the payment of a minimum dividend to be prescribed in consultation with the Central Government.

(iv) The Corporation will be authorised to issue bonds and debentures for amounts which together with the contingent liabilities of the Corporation shall not exceed five times the amount of the paid-up share capital and the reserve fund of the Corporation. These bonds and debentures will be guaranteed as to the repayment of the principal and the payment of interest at such rate as may be fixed by the State Government.

(v) The Corporation may accept deposits from the public repayable after not less than five years, subject to the maximum not exceeding the paid-up capital.

(vi) The Corporation will be managed by a Board consisting of a majority of Directors nominated by the State Government, the Reserve Bank and the Industrial Finance Corporation of India.

(vii) The Corporation will be authorized to make long-term loans to industrial concerns and to guarantee loans raised by industrial concerns which are repayable within a period not exceeding 25 years. The Corporation will be further authorized to underwrite the issue of stocks, shares, bonds or debentures by industrial concerns, subject to the provision that the Corporation will be required to dispose of any shares, etc., acquired by it in fulfilment of its underwriting liability within a period of 7 years.

(viii) Until a reserve fund is created equal to the paid-up share capital of the Corporation, and until the State Government has been repaid all amounts paid by them, if any, in fulfilment of the guarantee liability, the rate of dividend shall not exceed the rate guaranteed by the State Government. Under no circumstances shall the dividend exceed 5 per cent per annum and surplus profits will be payable to the State Government.

(ix) The Corporation will have special privileges in the matter of enforcement of its claims against borrowers.

CHINTAMAN D. DESHMUKH

NEW DELHI;

The 30th November, 1950.

#### NOTES ON CLAUSES

*Clause 3.*—The Bill is only an enabling measure and State Financial Corporations are to be established by the State Governments by notification.

*Clause 4*—Unlike in the case of the Industrial Finance Corporation, it is intended that public should participate in the share capital of the State Corporations. Such participation will, however, be limited to a maximum of 25 per cent. of the total share capital.

*Clause 5.*—Transferability of the shares will be restricted to parties who are eligible to subscribe in the first instance. However, shares subscribed by the public will be freely transferable.

*Clause 6*—State guarantee is necessary in order to secure participation of the proper type of banks and other institutions and to encourage public participation and also to ensure that the financial assistance granted by the Corporation is not restricted only to industries likely to yield quick profits.

*Clause 7.*—The Corporations will be authorized to augment their resources by issuing bonds and debentures which will be guaranteed by the State Government, subject to an over-all limit of the total liability of the Corporations not exceeding five times the amount of the paid-up share capital and the reserve fund.

*Clause 8*—The Corporations will be authorized to augment their resources by accepting deposits from the public of long maturity, subject to a maximum limit upto the paid-up capital.

*Clause 9.*—The management of the Corporation is framed on the lines of that of the Industrial Finance Corporation.

*Clause 10.*—The constitution of the Board is designed to secure the association of men with wide experience of industry and business and due control by the State Government and the Reserve Bank.

*Clause 11*—The rotational retirement of the elected Directors is designed to ensure continuity in the policy of the Corporation.

*Clauses 12 and 13.*—Contain the usual provisions in regard to disqualifications and removal of Directors.

*Clauses 24 and 38.*—The powers and duties of the Board will be subject to such policy directives as may be issued by the State Government

*Clause 25.*—The business of the Corporation will be confined to guaranteeing of loans raised by industrial concerns, underwriting of the issue of stocks, shares, bonds and debentures and granting of loans and advances properly secured to industrial concerns for a period not exceeding 25 years.

*Clause 26.*—In order to ensure that the commitments of the Corporations are sufficiently spread, no single industrial concern is to get assistance aggregating to more than 10 per cent. of the paid-up share capital of the Corporation or Rs. 10 lakhs, whichever is less.

*Clause 28.*—The object of the Corporation is to assist industrial concerns in obtaining capital and not to act as a holding company or investment trust. As the Corporation will give medium and long-term credit, it is undesirable to accept short-term deposits.

*Clauses 29 and 30.*—These are intended to enable the Corporation to take timely action with a view to preventing losses.

*Clauses 31 and 32.*—Special privileges for the enforcement of claims against borrowers are necessary with a view to enabling the Corporation to quickly realise its claims in cases of apprehended losses.

*Clause 34.*—Surplus funds of the Corporation may be invested only in Government securities.

*Clause 35.*—Until a Corporation gets into its stride, dividend will be payable only at the lower rate guaranteed under clause 6, and until the reserve fund equals the paid-up share capital, all surplus profit will be diverted to the reserve fund. The maximum rate of dividend at 5 per cent. will operate only after the reserve fund has been fully built up and all liabilities to Government resulting from Government's guarantee have been extinguished.

*Clause 36.*—This provides for general meetings of shareholders.

*Clause 37.*—Provision has been made for the election of one of the Auditors by the private shareholders referred to in items (c) and (d) of sub-clause (3) of clause 4.

*Clause 46.*—This clause has been inserted at the request of the Government of Madras with a view to bringing the Madras Investment Corporation, Limited, which is a Company incorporated under the Indian Companies Act, 1913, within the scope of the Bill.

The remaining clauses are self-explanatory.

#### BILL NO. 103 OF 1950

#### *A Bill to amend the Indian Nursing Council Act, 1947.*

BE it enacted by Parliament as follows:—

**1. Short title.**—This Act may be called the Indian Nursing Council (Amendment) Act, 1950.

**2. Amendment of section 10, Act XLVIII of 1947.**—In sub-section (3) of section 10 of the Indian Nursing Council Act, 1947,—

(a) for the words “in any State or country outside the States” the words and letter “in any Part B State or foreign country” shall be substituted;

(b) in the first proviso,—

(i) for the words “of the State or country” the words “of the foreign country” shall be substituted;

(ii) for the words “in any State” the words “in India” shall be substituted;

- (ii) for the words "in that State or country" the words "in that country" shall be substituted; and
- (c) for clause (ii) of the second proviso, the following clause shall be substituted, namely:—

"(ii) any qualification granted by an authority in a Part B State and recognised on the said date by the State Council of a State to which this Act extends, shall continue to be a recognised qualification for the purpose of registration in that State."

#### STATEMENT OF OBJECTS AND REASONS.

Pending consideration of the extension of the Indian Nursing Council Act, 1947, to Part B States, this Bill seeks to amend the second proviso to sub-section (3) of section 10 of the Indian Nursing Council Act, 1947, in order that a qualification granted by an authority in a Part B State and recognised on the 31st December, 1947, by a Nursing Council in any State to which the Act now extends may continue to be a recognised qualification for the purpose of registration in that State after the said date. As the law stands at present, the qualification will cease to be recognised after the 31st December, 1950. It also makes certain other formal and clarificatory amendments in the same sub-section.

AMRIT KAUR.

NEW DELHI;

The 1st December, 1950.

#### BILL No. 104 OF 1950

*A Bill further to amend the Code of Civil Procedure, 1908.*

BE it enacted by Parliament as follows:—

**1. Short title and commencement.**—(1) This Act may be called the Code of Civil Procedure (Amendment) Act, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Amendment of section 1, Act V of 1908.**—For sub-section (3) of section 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), the following shall be substituted, namely:—

"(3) It extends to the whole of India except—

- (a) the Tribal Areas in the State of Assam;
- (b) save as hereinafter provided, the Scheduled Areas in the State of Madras;
- (c) the State of Jammu and Kashmir; and
- (d) the State of Manipur:

Provided that sections 36 to 43 and Order XXXIV in the First Schedule shall extend also to the Amindivi Islands and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Madras, and section 48 shall extend also to the said Agencies."

**3. Substitution of "India" for "the States" in Act V of 1908.**—In the said Code, unless otherwise expressly provided, for the words "the States", wherever they occur, the word "India" shall be substituted.



**4. Amendment of section 2, Act V of 1908.**—In section 2 of the said Code,—

(i) for clause (5), the following clause shall be substituted, namely:—

“(5) “foreign court” means a court situate outside India and not established or continued by the authority of the Central Government;”;

(ii) after clause (7), the following clauses shall be inserted, namely:—

“(7A) “High Court”, in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

(7B) “India”, except in sections 1, 29, 43, 44, 78, 79, 82, 88 and 87A, means the territory of India excluding the State of Jammu and Kashmir;”;

(iii) clause (21) shall be omitted.

**5. Amendment of section 7, Act V of 1908.**—In section 7 of the said Code, after the words “said Act or law” the words “or to courts in Part B States exercising a corresponding jurisdiction” shall be inserted.

**6. Substitution of new section for section 29, Act V of 1908.**—For section 29 of the said Code, the following section shall be substituted, namely:—

“29. *Service of foreign summonses.*—Summonses and other processes issued by—

(a) any civil or revenue court established in any part of India to which the provisions of this Code do not extend, or

(b) any civil or revenue court established or continued by the authority of the Central Government outside India, or

(c) any other civil or revenue court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply,

may be sent to the courts in the territories to which this Code extends, and served as if they were summonses issued by such courts.”

**7. Amendment of section 35A, Act V of 1908.**—In the first proviso to sub-section (2) of section 35A of the said Code,—

(i) after the figures “1887”, the words and letter “or under a corresponding law in force in a Part B State” shall be inserted; and

(ii) for the words “under that Act” the words “under such Act or law” shall be substituted.

**8. Substitution of new section for section 43, Act V of 1908.**—For section 43 of the said Code, the following section shall be substituted, namely:—

“43. *Execution of decrees passed by civil courts in places to which this Code does not extend.*—Any decree passed by any civil court established in any part of India to which the provisions of this Code do not extend, or by any court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the court by which it was passed, be executed in the manner herein provided within the jurisdiction of any court in the territories to which this Code extends.”

**9. Substitution of new section for section 44, Act V of 1908.**—For section 44 of the said Code, the following section shall be substituted, namely:—

“44. *Execution of decrees passed by revenue courts in places to which this Code does not extend.*—The State Government may, by notification

in the Official Gazette, declare that the decrees of any revenue court in any part of India to which the provisions of this Code do not extend, or any class of such decrees, may be executed in the State as if they had been passed by courts in that State."

**10. Amendment of section 60, Act V of 1908.**—In clause (j) of section 60 of the Code, for the words and figures "the Indian Army Act, 1911, or the Burma Army Act", the words and figures "the Army Act, 1950" shall be substituted.

**11. Substitution of new section for section 78, Act V of 1908.**—For section 78 of the said Code, the following section shall be substituted, namely:—

"78. *Commissions issued by foreign courts.*—Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of—

(a) courts situate in any part of India to which the provisions of this Code do not extend; or

(b) courts established or continued by the authority of the Central Government outside India; or

(c) courts of any State or country outside India."

**12. Substitution of new sections 83 to 87B for sections 83 to 87, Act V of 1908.**—For the heading above section 83, and for sections 83 to 87, inclusive, of the said Code, the following shall be substituted, namely:—

**"SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS, AMBASSADORS AND ENVOYS.**

**88. *When aliens may sue.***—Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such court.

*Explanation.*—Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of this section, be deemed to be an alien enemy residing in a foreign country.

**84. *When foreign States may sue.***—A foreign State may sue in any competent court:

Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

**85. *Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers.***—(1) The Central Government may, at the request of the Ruler of a foreign State or at the request of any person competent in the opinion of the Central Government to act on behalf of such Ruler, by order appoint any persons to prosecute or defend any suit on behalf of such Ruler, and any persons so appointed shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of such Ruler.

(3) A person appointed under this section may authorise or appoint any other persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

86. *Suits against foreign Rulers, Ambassadors and Envoys.*—(1) No Ruler of a foreign State may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid a Ruler from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the court in which the Ruler may be sued, but it shall not be given, unless it appears to the Central Government that the Ruler—

(a) has instituted a suit in the court against the person desiring to sue him, or

(b) by himself or another, trades within the local limits of the jurisdiction of the court, or

(c) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or

(d) has expressly or impliedly waived the privilege accorded to him by this section.

(3) No Ruler of a foreign State shall be arrested under this Code and, except with the consent of the Central Government certified in writing by a Secretary to that Government, no decree shall be executed against the property of any such Ruler.

(4) The preceding provisions of this section shall apply in relation to—

(a) any Ambassador or Envoy of a foreign State;

(b) any High Commissioner of a Commonwealth country; and

(c) any such member of the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf,

as they apply in relation to the Ruler of a foreign State.

87. *Style of foreign Rulers as parties to suits.*—The Ruler of a foreign State may sue and shall be sued, in the name of his State:

Provided that in giving the consent referred to in section 86, the Central Government may direct that the Ruler may be sued in the name of an agent or in any other name.

87A. *Definitions of "foreign State" and "Ruler".*—(1) In this Part,—

(a) "foreign State" means any State outside India which has been recognised by the Central Government; and

(b) "Ruler", in relation to a foreign State, means the person who is for the time being recognised by the Central Government to be the head of that State.

(2) Every court shall take judicial notice of the fact—

(a) that a State has or has not been recognised by the Central Government;

(b) that a person has or has not been recognised by the Central Government to be the head of a State.

#### SUITS AGAINST RULERS OF FORMER INDIAN STATES.

87B. *Application of sections 85 and 86 to Rulers of former Indian States*—(1) The provisions of section 85 and of sub-sections (1) and (3) of section 86 shall apply in relation to the Rulers of any former Indian State as they apply in relation to the Ruler of a foreign State.

(2) In this section—

(a) “former Indian State” means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this section; and

(b) “Ruler”, in relation to a former Indian State, means the person who, for the time being, is recognised by the President as the Ruler of that State for the purposes of the Constitution.”

13. **Amendment of section 92, Act V of 1908.**—In sub-section (2) of section 92 of the said Code, after the figures “1863” the words “or by any corresponding law in force in a Part B State” shall be inserted.

14. **Amendment of heading of Part IX and of section 116, Act V of 1908.**—In the heading of Part IX of the said Code, for the words “CHARTERED HIGH COURTS” the words and letters “HIGH COURTS FOR PART A STATES AND PART B STATES” shall be substituted, and in section 116 of the said Code, after the words and letter “Part A States” the words and letter “and Part B States” shall be inserted.

15. **Amendment of section 122, Act V of 1908.**—In section 122 of the said Code, after the words and letter “Part A States” the words and letter “and Part B States” shall be inserted.

16. **Amendment of section 123, Act V of 1908.**—In sub-section (2) of section 123 of the said Code,—

(i) for clauses (b) and (c), the following clause shall be substituted, namely:—

“(b) two legal practitioners enrolled in that Court”, and

(ii) clauses (d) and (e) shall be re-lettered as clauses (c) and (d) respectively.

17. **Amendment of section 129, Act V of 1908.**—In section 129 of the said Code, after the words and letter “Part A State”, the words and letter “or a Part B State” shall be inserted, and after the words “Letters Patent or order”, the words “or other law” shall be inserted.

18. **Amendment of Order L, Act V of 1908.**—In rule 1 of Order L of the First Schedule to the said Code, after the words “said Act or law” the words and letter “or to courts in Part B States exercising a corresponding jurisdiction” shall be inserted.

19. **Special provisions explaining operation of Act IX of 1922.**—Notwithstanding anything contained in sub-section (2) of section 1 of the Code of Civil Procedure (Amendment) Act, 1922 (IX of 1922), but without prejudice to any

action taken thereunder by any Provincial Government or State Government before the date referred to in sub-section (2) of section 1 of this Act, the amendments made in the said Code by sections 2, 3 and 4 of the said Act shall, with effect from that date, become operative throughout the territories to which the said Code will then extend.

**20. Repeals and savings.**—(1) If, immediately before the date on which the said Code comes into force in any Part B State, there is in force in that State any law corresponding to the said Code, that law shall on that date stand repealed:

Provided that the repeal shall not affect—

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or

(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions contained in sub-section (1), notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under any enactment hereby repealed shall, so far as they are consistent with the said Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under the said Code and by the authority empowered thereby in such behalf.

(3) In every law or notification passed or issued before the commencement of this Act in which reference is made to or to any Chapter or section of any law hereby repealed, such reference shall, so far as may be practicable, be taken to be made to the said Code or its corresponding Part, Order, section or rule.

### STATEMENT OF OBJECTS AND REASONS

The Code of Civil Procedure, 1908, at present extends to all Part A States and Part C States except Manipur. Each of the Part B States has its own Code of Civil Procedure which, although very similar to the Code of 1908, is technically a distinct law. A material disadvantage arising out of this plurality of Codes is that decrees, summonses and other processes made or issued by civil courts in a Part B State are not automatically executable in a Part A State or Part C State, and *vice versa*. It is obviously desirable that the Code of 1908 should be extended to all Part B States in order that there might be a single law regulating civil procedure throughout India. The main object of this Bill is to provide for such an extension.

Secondly, in view of the constitutional absorption of the former Indian States in the polity of the country, it has become necessary to recast the fascicle of five sections relating to "suits by aliens and by or against foreign Rulers and Rulers of Part B States", contained in Part IV of the Code. Sections 83 to 87 till recently applied to all those Rulers of Indian States who exercised any sovereign powers within their territories, in exactly the same way as they applied to Rulers of independent foreign States. Although their constitutional

position is now very different, it is necessary to implement the assurances given to the Rulers of the integrated and merged States that they will continue to be entitled to all the personal privileges enjoyed by them, whether within or outside the territories of their respective States, before the 15th August, 1947. It is accordingly proposed in clause 12 of the Bill that sections 83 to 87 of the Code should be replaced by a revised set of provisions applicable to Rulers, Ambassadors and Envoys of foreign States and to certain members of their staff who are entitled to these diplomatic privileges and immunities, followed by a special provision on similar lines applicable to Rulers of the former Indian States.

B. R. AMBEDKAR.

NEW DELHI;

The 12th December, 1950.

#### *Notes on clauses.*

*Clause 2.*—This clause makes the Code applicable to the whole of India except certain areas. The State of Manipur has been excluded because of the provisions contained in the Part C States (Laws) Act, 1950 and an exception is made in respect of certain areas in Madras to preserve the existing position.

*Clause 6.*—By the substitution of a new section for section 29, provision is being made for the service of summonses issued by courts both from those parts of India to which the Code does not extend and also from outside India.

*Clause 8.*—The proposed section 43 will make decrees passed by courts situate in those parts of India to which the Code does not extend executable in India.

*Clause 11.*—Commissions issued by courts outside the territories to which the Code extends are put on a par with decrees passed or summonses issued by such courts.

*Clause 12.*—Proposed section 83: Except for minor drafting changes, this reproduces the provisions of section 83 as it now stands.

Proposed section 84: This corresponds to section 84 as it now stands, except that the rule of evidence in sub-section (2) has been removed to the proposed section 87A and made applicable to the whole Part

Proposed section 85 reproduces, except for minor or consequential changes, section 85 as it now stands.

Proposed section 86 corresponds to the existing section 86 but with two important changes, one enabling suits to be brought against foreign Rulers if they have no objection thereto, and the other providing for the application of that section to High Commissioners and to specified members of the staff of diplomatic missions.

Proposed section 87A contains certain general definitions and rules of evidence.

Proposed section 87B provides for a notification of the Central Government listing the former Indian States, the Rulers of which are entitled to the privileges under sections 85 and 86(1) and (3).

*Clause 19.*—Act IX of 1922, which amended the Code of Civil Procedure, contained a provision authorising the State Government to bring the said Act

into force on suitable dates. The Act has been put into force in all Part A States, but the position with regard to a few Part C States is not certain. It is necessary to put the matter beyond doubt by stating that the Code as now extended to the whole of India except a few specified States is the Code as amended up to date, including the amendments made by Act IX of 1922.

*Clause 20.*—Repeals all corresponding laws in force in Part B States to which the Code now extends, and contains the necessary saving provisions.

#### BILL NO. 105 OF 1950

*A Bill to provide for the constitution and regulation of the Air Defence Reserve.*

BE it enacted by Parliament as follows:—

**1. Short title, extent and commencement.**—(1) This Act may be called the Air Defence Reserve Act, 1950.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(1) “competent authority” means the Officer Commanding an Air Force Station, and includes any other authority whom the Central Government may, by order notified in the Official Gazette, specify in this behalf;

(2) “enrolled person” means any person who, under the provisions of section 8, is deemed to be enrolled in the Reserve;

(3) “prescribed” means prescribed by rules made under this Act;

(4) “Reserve” means the Air Defence Reserve constituted under this Act.

**3. Obligation to register.**—(1) Every citizen of India who—

(a) holds or has held a public transport pilot's licence ('B' Licence) issued under the Indian Aircraft Rules, 1937; or

(b) has had not less than two hundred hours' experience of solo flying (including not less than thirty landings); or

(c) holds or has held a first class navigator's licence issued under the Indian Aircraft Rules, 1937; or

(d) has had at least four years' air experience during which at least six hundred hours shall have been spent in the air, not less than one hundred hours of this being experience of navigation in the air; or

(e) holds or has held a first class radio telegraph operator's licence issued under the Indian Aircraft Rules, 1937; or

(f) holds or has held a radio telephone operator's licence issued under the Indian Aircraft Rules, 1937; or

(g) holds or has held a licence as ground engineer in any of the categories A, B, C, D or X issued under the Indian Aircraft Rules, 1937;

shall within the prescribed period correctly fill up, or cause to be filled up, to the best of his knowledge and belief the prescribed form, and sign and lodge it with the competent authority nearest to his usual place of residence or business:

Provided that nothing contained in this sub-section shall apply—

(i) to any person belonging to any of the classes specified in clauses (a) to (f) if he has attained the age of thirty-seven years; or

(ii) to any person belonging to the class specified in clause (g) if he has attained the age of fifty years.

(2) Without prejudice to the provisions contained in sub-section (1), the competent authority may, if he is satisfied that the provisions of that sub-section apply to any person, by order in writing, require such person to furnish such particulars as may be required by the order and within such time as may be specified therein, and such person shall, within the specified time, furnish correctly to the best of his knowledge and belief the said particulars to the said authority in such form or manner as may be prescribed.

**4. Liability to be called up for enquiry.**—Every person to whom the provisions of sub-section (1) of section 3 are applicable shall be liable to be called up for enquiry under section 5—

(a) if he belongs to any of the classes specified in clauses (a) to (f) of the said sub-section until he has completed his forty-second year, and

(b) if he belongs to the class specified in clause (g) of the said sub-section, until he has completed his fiftieth year,

and no longer.

**5. Calling up for enquiry.**—(1) The competent authority may cause to be served on any person for the time being liable to be called up for enquiry under section 4 a written notice stating that he is called up for enquiry into his fitness for service in the Reserve and requiring him to present himself to such person and at such place and at such time (not earlier than the seventh day after the date of the service of the notice) as may be specified in the notice and to submit himself to enquiry by the competent authority.

(2) Where a notice under sub-section (1) has been duly served on any person, the competent authority may, at any time, while the person remains liable under this Act to be called up for enquiry, cancel the notice and cause to be served on him a further notice varying the original notice.

**6. Medical examination.**—Every person called up for enquiry shall, if and when required by the competent authority, present himself for examination before such medical officer as may be directed by that authority, and, for the purposes of such examination, shall comply with the directions of the medical officer.

**7. Registration of persons considered fit for enrolment.**—If after such enquiry and medical examination as aforesaid the competent authority considers a person fit for enrolment in the Reserve, he shall inform him accordingly and enter his name and other prescribed particulars in a register maintained in such form and manner as may be prescribed.

**8. Calling up for service.**—The competent authority may cause to be served on any person whose name is entered in the register maintained in pursuance of section 7 a written notice stating that he is called up for service in the Reserve and requiring him to present himself at such place and time (not earlier than the seventh day after the date of the service of the notice) and to such authority as may be specified in the notice; and the person upon whom the notice is served shall be deemed to be enrolled in the Reserve as from the day so specified.

**9. Periodical training.**—Every enrolled person shall undergo such periodical training as may be prescribed.



**10. Period of service.**—Every enrolled person shall be liable for service for a period of five years from the date of enrolment on the completion of which he shall be discharged unless he volunteers for service for further periods each of not more than five years' duration:

Provided that persons belonging to any of the classes specified in clauses (a) to (f) of sub-section (1) of section 3 shall be compulsorily discharged on their completing the age of forty-two years and persons belonging to the class specified in clause (g) of the said sub-section on their completing the age of fifty-five years.

**11. Liability to be called out.**—During the period of service every enrolled person shall be liable to be called out—

- (a) for training;
- (b) for service in aid of the civil power;
- (c) for Air Force service in India or abroad in an emergency.

**12. Discipline.**—Every enrolled person who is an officer, warrant officer, non-commissioned officer, or a person of a rank inferior to that of a non-commissioned officer, as the case may be, shall, when called out for training or service under section 11, be subject to the Air Force Act 1950 (XLV of 1950), and the rules and regulations made thereunder in the same manner as a person belonging to the air force and holding the same rank is subject to the said Act, and shall continue to be so subject until duly released from such training or service as the case may be.

**13. Power of Central Government to grant exemption.**—The Central Government may, for special reasons and subject to such conditions as may be prescribed, exempt any person from any obligation or liability under this Act or any particular provision thereof.

**14. Duties of employers.**—(1) It shall be the duty of an employer by whom a person called out under section 11 is employed, to grant him such leave as may be necessary, and at the termination of the period during which he has been so called out, to reinstate him in his employment in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been so called out:

Provided that if for any reason the reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to a tribunal constituted under section 15 and the tribunal shall, after hearing both the parties, pass an order,—

- (a) exempting the employer from the provisions of this section, or
- (b) requiring him to re-employ such person on such terms as it thinks suitable, or
- (c) requiring him to pay to such person by way of compensation for failure to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(2) Where any employer fails to obey any order of the tribunal under this section he shall be punishable with fine which may extend to one thousand rupees and the court by which the employer is convicted may order him (if he has not already been so required by the tribunal) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so

ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court:

Provided that in any proceeding under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within two months from the termination of the period during which he was called out under section 11.

**15. Tribunals.**—(1) The Central Government shall constitute for such areas and in such places as it thinks fit tribunals to hear and decide any matters referred to them under the proviso to sub-section (1) of section 14.

(2) Each tribunal shall consist of three members to be nominated by the Central Government, of whom one who shall be the chairman of the tribunal shall be a member of a civil service of Government not lower in status than a district and sessions judge, one shall be an Air Force officer not below the rank of a Group Captain and one shall be a non-official.

(3) The tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government.

(4) The chairman of the tribunal and any one other member of the tribunal shall constitute a quorum.

(5) A tribunal shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

**16. Service of notice.**—Any notice or order to be served on any person for the purposes of this Act may be sent by post to that person at his last known address.

**17. Competent authority deemed to be public servants.**—For the purposes of this Act, every competent authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

**18. Penalties.**—(1) Whoever refuses or without lawful excuse (the burden of proving which shall lie upon such person), neglects to comply fully with the requirements of sub-section (1) of section 3 or of any order made under sub-section (2) of that section, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever wilfully fails to comply with any notice issued under section 5 or section 8 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**19. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the composition of the Reserve and the divisions thereof;

(b) prescribe the form which is to be filled up by persons liable to be called up for enquiry;

(c) provide for the preparation, compilation and correction of the register under section 7;

(d) require persons liable to be called up for enquiry under section 4 and of persons whose names have been entered in the register under section 7 to notify any change in their address;

(e) prescribe the grant of allowances to persons called up for enquiry under section 5, or for medical examination under section 6, or for service under section 8;

(f) prescribe the training to be undergone by enrolled persons;

(g) prescribe the manner in which and the conditions subject to which the rank of any enrolled person shall be determined;

(h) define the conditions subject to which any person may be exempted from this Act or from any provision contained therein;

(i) provide for any other matter which under this Act is to be, or may be, prescribed.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

### STATEMENT OF OBJECTS AND REASONS.

The object of this measure is to provide legislative sanction for the constitution of an air force reserve, to be called the Air Defence Reserve, with a view to augment the personnel of the Air Force in an emergency.

Under the Bill, a census would be taken of the civilian technical manpower available in the country which could be utilised if occasion arose. All persons possessing certain flying or other technical qualifications would be required to furnish certain particulars to the appropriate authority and submit themselves for examination into their fitness for service. A register of persons who are fit for service would be maintained, and if and when occasion arises persons whose names are entered in the register will be called out for service.

The initial period of service for enrolled persons will be five years. On completion of this initial period they may, if they so desire, volunteer for continued service for further periods each of not more than five years' duration, subject to certain age restrictions.

The period of training will be prescribed in the rules made by the Central Government, and care will be taken to see that the training is so arranged that minimum dislocation is caused to the civil employer.

Provision is also made in the Bill requiring civil employers to grant any enrolled person such leave as may be necessary and to have him reinstated in his civil employment after the termination of the period during which he has been called out.

The composition of the Reserve, the ranks of persons enrolled and all other allied matters are left to be regulated by rules made by the Central Government, as it is intended to build up the Reserve gradually.

NEW DELHI;

The 8th December, 1950.

BALDEV SINGH.

### FINANCIAL MEMORANDUM

As explained in the Statement of Objects and Reasons, the Bill only seeks to provide the necessary legislative sanction for the constitution of an Air Force Reserve, the Reserve itself being built up gradually. The size of the Reserve will be related to the budgetary position each year. No expenditure is likely to be involved immediately the Bill is passed as the first step would be to take

a census of persons possessing flying and other allied qualifications, with a view to collecting statistics of persons who may be utilized to augment the regular Air Force in an emergency.

Until details regarding the composition and size of the Reserve and other related questions are settled, it is not possible to give a reliable estimate of the financial implications of the measure.

#### BILL No. 106 OF 1950

*A Bill to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.*

BE it enacted by Parliament as follows:—

#### PART I PRELIMINARY

**1. Short title.**—This Act may be called the Representation of the People (No. 2), Act, 1950.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

- (a) each of the expressions defined in section 2 or sub-section (1) of section 27 of the Representation of the People Act, 1950, but not defined in this Act, shall have the same meaning as in that Act;
- (b) “appropriate authority” means, in relation to an election to the House of the People or to the Council of States, the Central Government, and in relation to an election to the Legislative Assembly or the Legislative Council of a State, the State Government;
- (c) “corrupt practice” means any of the practices specified in section 118 or section 119;
- (d) “election” means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir;
- (e) “illegal practice” means any of the practices specified in section 120;
- (f) “prescribed” means prescribed by rules made under this Act;
- (g) “sign” in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed;
- (h) “Tribunal” means a tribunal appointed by the Election Commission under section 81.

(2) For the purposes of this Act, a Council of States constituency, a Parliamentary constituency, an Assembly constituency, a Council constituency, a local authorities’ constituency, a graduates’ constituency and a teachers’ constituency shall each be treated as a constituency of a different class.

(3) Any requirement under this Act that a notification, order, rule, declaration, notice or list issued or made by any authority shall be published in the official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule, declaration, notice or list shall—

- (a) where it is issued or made by the Central Government, be published in the Gazette of India;
- (b) where it is issued or made by a State Government be published in the official Gazette of the State; and

(c) where it is issued or made by any other authority, be published in the Gazette of India if it relates to an election to, or membership of, either House of Parliament, and in the official Gazette of the State if it relates to an election to, or membership of, the House or either House of the Legislature of a State.

(4) Where, under any of the provisions of this Act, anything is to be prescribed, different provisions may be made for different cases or classes of cases.

(5) Any reference in this Act to a law which is not in force in a Part B State shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

## PART II

### QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP

#### CHAPTER I

##### *Qualifications for membership of Parliament*

**3. Qualifications for membership of the Council of States.**—(1) A person shall not be qualified to be chosen as a representative of any Part A or Part B State (other than the State of Jammu and Kashmir) in the Council of States unless he is entitled to vote in the choice of a member to fill any of the seats allotted to that State in the House of the People

(2) A person shall not be qualified to be chosen as a representative of any Part C State or group of Part C States (other than the States of Manipur and Tripura) in the Council of States unless he is entitled to vote in the choice of a member as such representative.

(3) A person shall not be qualified to be chosen as a representative of the States of Manipur and Tripura in the Council of States unless he is entitled to vote in the choice of a member to fill any of the seats allotted to the said States in the House of the People.

**4. Qualifications for membership of the House of the People.**—A person shall not be qualified to be chosen to fill a seat in the House of the People, other than a seat allotted to the State of Jammu and Kashmir, unless—

(a) in the case of a seat reserved for the scheduled castes in any State, he is a member of any of the scheduled castes, whether of that State or of any other State, and is entitled to vote in the choice of a member to fill that seat or any other seat in the House of the People;

(b) in the case of a seat reserved for the scheduled tribes in any State, other than a seat reserved for the scheduled tribes in the autonomous districts of Assam, he is a member of any of the scheduled tribes of that State for which the seat is so reserved and is entitled to vote in the choice of a member to fill that seat, or any other seat in the House of the People;

(c) in the case of a seat reserved for the scheduled tribes in the autonomous districts of Assam, he is a member of any of those scheduled tribes and is entitled to vote in the choice of a member to fill that seat; and

(d) in the case of any other seat he is entitled to vote in the choice of a member to fill that seat or any other seat in the House of the People

#### CHAPTER II

##### *Qualifications for membership of State Legislature*

**5. Qualifications for membership of a Legislative Assembly.**—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

(a) in the case of a seat reserved for the scheduled castes or for the scheduled tribes of that State, he is a member of any of those castes or of those tribes,

as the case may be, and is entitled to vote in the choice of a member to fill that seat or any other seat in that Legislative Assembly;

(b) in the case of a seat reserved for an autonomous district of Assam, other than a seat the constituency for which comprises the cantonment and municipality of Shillong, he is a member of a scheduled tribe of that district and is entitled to vote in the choice of a member to fill that seat or any other seat reserved for that district; and

(c) in the case of any other seat he is entitled to vote in the choice of a member to fill that seat or any other seat in that Legislative Assembly.

**6. Qualifications for membership of a Legislative Council.**—(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is entitled to vote in the choice of a member to fill some seat in the Legislative Assembly of that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State.

### CHAPTER III

#### *Disqualifications*

#### **7 Disqualifications for membership of Parliament or of a State Legislature.**—

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

(a) if, whether before or after the commencement of the Constitution, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by section 184 or section 185 to be an offence or practice entailing disqualification for membership of Parliament and of the Legislature of every State, unless such period has elapsed as has been provided in that behalf in the said section 184 or section 185, as the case may be;

(b) if, whether before or after the commencement of the Constitution, he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of **five years**, or such less period as the **Election Commission may allow in any particular case**, has elapsed since his release;

(c) if, having been nominated as a candidate for Parliament or the Legislature of any State or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by or under this Act, unless **five years have elapsed from the date by which the return ought to have been lodged or the Election Commission has removed the disqualification**:

Provided that a disqualification under clause (c) shall not take effect until the expiration of two months from the date by which the return ought to have been lodged or of such longer period as the Election Commission may in any particular case allow.

(2) A person shall not be qualified for being chosen as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State while he is serving a sentence of transportation or of imprisonment for an offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of clause (a) or clause (b) of subsection (1), is at the date of the disqualification a member of Parliament or

of the Legislature of a State, then, notwithstanding anything in the foregoing provisions of this section, such disqualification shall not take effect until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which such disqualification does not take effect under this sub-section, he shall not sit or vote in Parliament or in the Legislature of the State, as the case may be.

### PART III

#### NOTIFICATION OF GENERAL ELECTIONS

##### CHAPTER I

##### *Parliament*

##### *The Council of States*

**8. Notifications for election to the Council of States.**—(1) For the purpose of constituting the Council of States under the Constitution in due time, the President shall,—

(a) after the names of the elected members of the Legislative Assemblies of Part A States and Part B States other than the State of Jammu and Kashmir first constituted under the Constitution have been notified under section 63, call upon the elected members of each such Assembly, by a notification in the Gazette of India, to elect members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification, and

(b) by another notification call upon every Council of States constituency to elect a member or members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification.

(2) For the purpose of filling the seats of members retiring on the expiration of their respective terms of office in every second year after the constitution of the Council of States, the President shall,—

(a) by a notification in the Gazette of India, call upon the elected members of the Legislative Assembly of each of the States referred to in sub-section (1) concerned to elect members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification, and

(b) by another notification call upon each of the Council of States constituencies concerned to elect a member or members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification:

Provided that the notifications under this sub-section shall be issued at such time not being more than four months prior to the date on which the term of office of the retiring members would expire under section 148 as may be appointed in this behalf by the Election Commission.

##### *The House of the People*

**9. General elections to the House of the People.**—(1) A general election shall be held for the purpose of constituting the House of the People under the Constitution in due time.

(2) A general election shall also be held on the expiration of the duration of the House of the People or on its dissolution in order that a new House of the People may be constituted.

**10. Notification for election to the House of the People.**—For the purpose of constituting the House of the People under the Constitution in due time or on the expiration of the duration of the House of the People or on its dissolution, the President shall, by a notification in the Gazette of India call upon every Parliamentary constituency to elect a member or members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification:

Provided that for the first general election to be held under the Constitution for the purpose of constituting the House of the People in due time the said notification shall be issued at such time as may be appointed in this behalf by the Election Commission:

Provided further that for any general election for the purpose of constituting the House of the People on the expiration of its duration, the said notification shall be issued at such time, not being more than four months prior to the date on which the duration of the House of the People would expire in the ordinary course of events, as may be appointed in this behalf by the Election Commission.

## CHAPTER II

### *State Legislatures*

#### *The State Legislative Assemblies*

**11. General Elections to Legislative Assemblies.**—(1) A general election shall be held for the purpose of constituting the Legislative Assembly of each State under the Constitution in due time.

(2) A general election shall also be held on the expiration of the duration of an Assembly or on its dissolution in order that a new Assembly may be constituted.

**12. Notification for election to State Legislative Assemblies.**—For the purpose of constituting the Legislative Assembly of a State under the Constitution in due time or on the expiration of the duration of an Assembly or on its dissolution, the Governor or Rajpramukh, as the case may be, of the State shall, by a notification in the official Gazette, call upon every Assembly constituency to elect a member or members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification:

Provided that for the first general election to be held under the Constitution for the purpose of constituting the Legislative Assembly of a State in due time the said notification shall be issued at such time as may be appointed in this behalf by the Election Commission:

Provided further that for the purpose of constituting the Legislative Assembly of a State on the expiration of its duration the said notification shall be issued at such time not being more than four months prior to the date on which the duration of the Legislative Assembly of the State would expire in the ordinary course of events, as may be appointed in this behalf by the Election Commission.

#### *The State Legislative Councils*

**13. Notifications for election to State Legislative Councils.**—(1) For the purpose of constituting the Legislative Council of a State under the Constitution in due time, the Governor or Rajpramukh of the State, as the case may be, shall—

(a) by a notification in the official Gazette call upon every local authorities' constituency, every graduates' constituency and every



teachers' constituency to elect in accordance with the provisions of this Act and of the rules and orders thereunder a member or members within such time as may be appointed in this behalf by the Election Commission and specified in such notification, and

- (b) after the names of the members of the Legislative Assembly of the State first constituted under the Constitution have been notified under section 63, call upon such members, by another notification in the official Gazette, to elect members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification.

(2) For the purpose of filling the seats of members retiring on the expiration of their respective terms of office in every second year after the constitution of the Legislative Council of a State, the Governor or Rajpramukh, as the case may be, shall—

- (a) by a notification in the official Gazette call upon every local authorities' constituency, every graduates' constituency and every teachers' constituency concerned to elect in accordance with the provisions of this Act and of the rules and orders thereunder a member or members within such time as may be appointed in this behalf by the Election Commission and specified in such notification, and

- (b) by another notification in the official Gazette call upon the members of the Legislative Assembly of the State to elect members in accordance with the provisions of this Act and of the rules and orders thereunder within such time as may be appointed in this behalf by the Election Commission and specified in such notification:

Provided that the notifications under this sub-section shall be issued at such time, not being more than four months prior to the date on which the term of office of the retiring members would expire under section 150, as may be appointed in this behalf by the Election Commission.

## PART IV

### ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

**14. Definition.**—In this Part and in Part V, unless the context otherwise requires, "constituency" means a Council of States constituency or a Parliamentary constituency or an Assembly constituency or a Council constituency.

**15. Returning Officer for each constituency.**—For each constituency there shall be a Returning Officer who shall be such officer of Government as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate.

**16. Returning Officers at other elections.**—The Returning Officer for an election by the members of the Legislative Assembly of a State to fill seats in the Council of States or in the Legislative Council of the State shall be such officer of Government as the Election Commission may, in consultation with the Government of that State, designate or nominate.

**17. Assistant Returning Officers.**—(1) The Election Commission may appoint one or more persons to assist any Returning Officer in the performance of his functions:

Provided that every such person shall be an officer of Government.

(2) Every Assistant Returning Officer shall, subject to the control of the Returning Officer, be competent to perform all or any of the functions of the Returning Officer:

Provided that no Assistant Returning Officer shall perform any of the functions of the Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny of nominations or to the counting of votes unless the Returning Officer is unavoidably prevented from performing the said function.

**18. Returning Officer to include Assistant Returning Officers performing the functions of the Returning Officer.**—References in this Act to the Returning Officer shall, unless the context otherwise requires, be deemed to include an Assistant Returning Officer performing any function which he is authorised to perform under sub-section (2) of section 17.

**19. General duty of the Returning Officer.**—It shall be the general duty of the Returning Officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by this Act and rules or orders made thereunder.

**20. Provision of polling stations for Constituencies.**—The Returning Officer for each constituency shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for such constituency, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas for which they have respectively been provided.

**21. Appointment of presiding officers for polling stations.**—(1) The Returning Officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of a candidate in or about the election:

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the Returning Officer accordingly.

(2) A polling officer shall, if so directed by the presiding officer, perform all or any of the functions of a presiding officer under this Act or any rules or orders made thereunder.

(3) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorised by the Returning Officer to perform such functions during any such absence.

(4) References in this Act to the presiding officer shall, unless the context otherwise requires, be deemed to include any person performing any function which he is authorised to perform under sub-section (2) or sub-section (3), as the case may be.

**22. General duty of the presiding officer.**—It shall be the general duty of the presiding officer at a polling station to keep order thereat and to see that the poll is fairly taken.

**23. Duties of a polling officer.**—It shall be the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.

**24. Special provisions in the case of certain elections.**—(1) The Returning Officer for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Council of States or in the Legislative Council of the State shall, with the previous approval of the Election Commission, fix the

place at which the poll will be taken for such election and shall notify the place so fixed in such manner as the Election Commission may direct.

(2) The Returning Officer shall preside over such election at the place so fixed and shall appoint such polling officer or officers to assist him as he thinks necessary but he shall not appoint any person who has been employed by or on behalf of a candidate in or about the election.

## PART V

### CONDUCT OF ELECTIONS

#### CHAPTER I

#### *Nomination of candidates*

**25. Appointment of dates for nominations, etc.**—As soon as the notification calling upon a constituency to elect a member or members is issued under the provisions of Part III, the appropriate authority shall, by notification in the official Gazette, appoint—

- (a) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of the first mentioned notification;
- (b) the date for the scrutiny of nominations, which shall be a date not later than the seventh day after the last date for making nominations;
- (c) the last date for the withdrawal of candidatures, which shall be a date not later than the third day after the date for the scrutiny of nominations; and
- (d) the date or dates on which a poll shall, if necessary, be taken.

**26. Public notice of election.**—On the issue of a notification under section 25, the Returning Officer for the constituency shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election.

**27. Nomination of candidates for election.**—Any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.

**28. Presentation of nomination paper and requirements for a valid nomination.**—(1) On or before the date appointed under clause (a) of section 25 each candidate shall, either in person or by his proposer or seconder, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder.

(2) Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950) may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more:

Provided that if the name of a person is entered more than once in the electoral roll of a constituency or is included in the electoral roll of two or more constituencies of the same class, such person shall not be entitled to subscribe as proposer or seconder more than one nomination paper for each vacancy to be filled in that constituency, or in not more than one of such constituencies of the same class.

(3) Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed; and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper.

(4) Any nomination paper which is not received before three o'clock in the afternoon on the date appointed under clause (a) of section 25 shall be rejected.

(5) On the presentation of a nomination paper, the Returning Officer may require the person presenting the same to produce copies of the electoral rolls in which the names of the candidate and his proposer and seconder are included or of the relevant entries in such rolls, and shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and
- (b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked.

**29. Deposits.**—At the time of delivery of nomination paper under sub-section (1) of section 28, each candidate shall enclose with the nomination paper a receipt from the Reserve Bank of India or a Government Treasury showing that a deposit of five hundred rupees in the case of an election to Parliament and a deposit of two hundred and fifty rupees in the case of an election to the Legislature of a State has been made by him in the Reserve Bank of India or the Treasury, and no candidate shall be deemed to be duly nominated unless such deposit has been made and such receipt has been enclosed with the nomination paper:

Provided that where the candidate is a member of any of the scheduled castes or scheduled tribes, the amount to be deposited by him shall be two hundred and fifty rupees in the case of an election to Parliament, and one hundred and twenty-five rupees in the case of an election to the Legislature of a State:

Provided further that where a candidate delivers more than one nomination paper for election in the same constituency not more than one deposit shall be required of him under this section

**30. Notice of nominations and the time and place for their scrutiny.**—The Returning Officer shall, on receiving the nomination paper under sub-section (1) of section 28, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

**31. Scrutiny of nominations.**—(1) On the date fixed for the scrutiny of nominations under section 25, the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the Returning Officer may appoint; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 28.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

- (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or
- (b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or
- (c) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-section (2) of section 28; or
- (d) that there has been any failure to comply with any of the provisions of section 28 or section 29; or
- (e) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.

(3) Nothing contained in clause (c), clause (d) or clause (e) of sub-section (2) shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not refuse any nomination paper on the ground of a slight technical defect, such as, the wrong spelling of a name.

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 25 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence.

(6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section—

- (a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be, is disqualified under sub-section (2) of section 28;
- (b) where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid.

**32. Withdrawal of candidature.**—(1) Any candidate may withdraw his candidature by a notice in writing in the prescribed form subscribed by him and delivered to the Returning Officer either by such candidate in person or by his proposer or seconder before three o'clock in the afternoon on the day fixed under clause (c) of section 25:

Provided that if that day is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881 (XXVI of 1881) or has been notified by the appropriate authority as a day to be observed as a holiday in Government offices in the State, the notice of withdrawal of candidature shall be considered as having been delivered in due time if it is delivered before three o'clock in the afternoon on the next succeeding day which is neither such a public holiday nor a day so notified.

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice or to be renominated as a candidate for the same election.

(8) The Returning Officer shall, on receiving a notice of withdrawal under sub-section (1), as soon as may be thereafter, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

**33. Publication of nominations.**—The Returning Officer shall, immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 32, prepare and publish a list of valid nominations in such manner as may be prescribed:

Provided that where the Returning Officer has under section 31 made an order from which an appeal lies under section 35, no such list shall be prepared or published until the expiration of the period within which such appeal may be presented and, if an appeal has been presented within that period, until the appeal has been disposed of and the orders of the appellate authority have been received by the Returning Officer.

**34. Nomination of candidates at other elections.**—(1) Any person may be nominated as a candidate for election to fill a seat in the Council of States to be filled by election by the members of the Legislative Assembly of a State, or a seat in the Legislative Council of a State to be filled by election by the members of the Legislative Assembly of that State, if he is qualified to be chosen to fill that seat under the Constitution and this Act.

(2) The appropriate authority shall, by notification in the official Gazette, appoint for each such election—

(a) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of the notification calling upon the members of the Legislative Assembly of the State to elect a member or members;

(b) the date for the scrutiny of nominations, which shall be a date not later than the seventh day after the last date for making nominations;

(c) the last date for the withdrawal of candidatures, which shall be a date not later than the third day after the date for the scrutiny of nominations; and

(d) the date on which a poll shall, if necessary, be taken.

(8) The provisions of sub-sections (1), (8), (4) and (5) of section 28 and sections 29 to 33 shall apply in relation to nominations of candidates, deposits to be made on such nominations and withdrawal of candidatures at any such election as they apply in relation to nominations of candidates, deposits to be made

on such nominations and withdrawal of candidatures at elections in any constituency:

Provided that any person who is a member of the Legislative Assembly of a State the members of which have been called upon to elect a member or members to the Council of States or to the Legislative Council of the State, as the case may be, shall be qualified to subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled, but no more:

Provided further that any references in the said provisions—

- (a) to the electoral roll of the constituency shall be construed as a reference to the list of members made available to the members of the Legislative Assembly under sub-section (2) of section 146;
- (b) to section 25 and to sub-section (2) of section 28 shall be construed as references to sub-section (2) of this section and to the first proviso to this sub-section respectively.

## CHAPTER II

### *Disputes regarding nominations.*

**35. Appeals from decisions of Returning Officers.**—(1) The Returning Officer shall on the application of any person nominated as a candidate for the election or the election agent or proposer or seconder of such person supply forthwith to the applicant a copy of the decision of such officer accepting or rejecting any nomination under Chapter I of this Part in respect of such election together with the statement of reasons, if any, therefor.

(2) Any person aggrieved by the decision of the Returning Officer accepting or rejecting any nomination paper under Chapter I of this Part may, within seven days from the date of such decision present an appeal therefrom to such authority as may be designated or nominated in this behalf by the Election Commission.

(3) In every such appeal the appellant shall join as respondents to his appeal all other candidates for the election whose nomination papers have been accepted or rejected by the Returning Officer.

(4) On presentation of the appeal the appellate authority shall forthwith send for the records of the case from the Returning Officer, and after perusing the same and holding such summary inquiry as it thinks fit decide the appeal and pass orders either confirming the decision of the Returning Officer or directing him to accept or reject the nomination paper in question and shall without delay send a copy of its orders to the Returning Officer:

Provided that no appeal shall be decided under this sub-section without giving the parties thereto in the prescribed manner an opportunity of being heard.

(5) On receipt of the order of the appellate authority the Returning Officer shall, where such authority has directed him to accept or reject any nomination paper, comply with such order.

(6) The decision of the appellate authority and, subject only to such decision, the decision of the Returning Officer accepting or rejecting any nomination paper under Chapter I of this Part shall be final and conclusive.

(7) Nothing in this section shall apply in relation to the first elections held under this Act.

## CHAPTER III

### *Candidates and their agents.*

**36. Appointment of election agents.**—(1) Every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of section 28 or under that sub-section read with sub-section (3)

of section 34, as the case may be, appoint in writing either himself or some one other person to be his election agent.

(2) When a candidate appoints some person other than himself to be his election agent he shall obtain in writing the acceptance by such person of the office of such election agent.

**37. Disqualification for being an election agent**—No person shall be appointed an election agent who is disqualified from being an election agent under section 140.

**38. Revocation of the appointment or death of an election agent.**—(1) Any revocation of the appointment of an election agent, whether he be the candidate himself or not, shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning Officer.

(2) In the event of such a revocation or of the death of an election agent, whether that event occurs before or during the election, or after the election but before a return of the candidate's election expenses has been lodged in accordance with the provisions of section 71, the candidate shall appoint forthwith either himself or some other person to be his election agent in the manner provided in section 36, and shall give notice in writing of the appointment to the Returning Officer.

**39. Effect of default in appointment of election agent under section 38.**—(1) If the appointment of an election agent is revoked without a new appointment being made, the candidate himself shall be deemed to have been appointed or re-appointed, as the case may be, his election agent.

(2) If the election agent (not being the candidate himself) dies and a new appointment is not made on the day of the death or on the following day, the candidate shall be deemed to have appointed himself his election agent as from the time of the death.

**40. Duty of the election agent to keep accounts.**—Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of expenditure in connection with the election as may be prescribed.

**41. Other functions of the election agent.**—Every election agent shall perform such other functions in connection with each election for which he is appointed election agent as are required to be performed by or under this Act by such agent.

**42. Appointment of polling agents.**—A candidate who has been duly nominated under this Act and who has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 32, or in that sub-section read with sub-section (3) of section 34, as the case may be, may, at least seven days before the commencement of the poll, appoint in the prescribed manner one agent and one relief agent and no more to act as his polling agent at each polling station, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the Returning Officer and to such other officer, as may be prescribed.

**43. Appointment of counting agents.**—Any such candidate as is mentioned in section 42 may, before the commencement of the poll, appoint in the prescribed manner one agent and no more to be present as his counting agent at the counting of votes, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the Returning Officer.

**44. Revocation of the appointment or death of a polling agent or counting agent.**—(1) Any revocation of the appointment of a polling agent or counting



agent shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning Officer.

(2) In the event of such revocation or of the death of a polling agent or counting agent before the close of the poll, the candidate may appoint in the prescribed manner another polling agent or counting agent, as the case may be, at any time before the poll is closed, and shall forthwith give notice of such appointment in the prescribed manner to the Returning Officer and to such other officer as may be prescribed.

**45. Functions of polling agents and counting agents.**—(1) A polling agent may perform such functions in connection with the poll as are authorised by or under this Act to be performed by a polling agent.

(2) A counting agent may perform such functions in connection with the counting of votes as are authorised by or under this Act to be performed by a counting agent.

**46. Performance by a candidate of the functions of a polling agent or counting agent.**—A candidate may himself do any act or thing which any polling or counting agent of his, if appointed, would have been authorised by or under this Act to do, or may assist his polling or counting agent in doing any such act or thing.

**47. Non-attendance of polling or counting agents.**—Where any act or thing is required or authorised by or under this Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

#### CHAPTER IV

##### *General procedure at elections*

**48. Death of candidate before poll.**—If a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Provided that no further nomination shall be necessary in the case of a candidate whose nomination was valid at the time of the countermanding of the poll.

**49. Procedure in contested and uncontested elections.**—(1) If the number of candidates who were duly nominated and who have not withdrawn their candidatures in the manner and within the time specified in sub-section (1) of section 32, or in that sub-section read with sub-section (3) of section 34, as the case may be, exceeds the number of seats to be filled, the Returning Officer shall forthwith publish in such form and manner as may be prescribed a list containing the names in alphabetical order and addresses of candidates as given in the nomination papers, together with such other particulars as may be prescribed, and a poll shall be taken.

(2) If the number of such candidates is equal to the number of seats to be filled, the Returning Officer shall declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall declare all such candidates to be elected and the appropriate authority shall, by notification in the official Gazette, and

upon the constituency or the members of the State Legislative Assembly concerned, as the case may be, to elect a person or persons to fill the remaining seat or seats within such time as may be fixed by the Election Commission and specified in the notification:

Provided that where the constituency or the members of the State Legislative Assembly having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the appropriate authority shall not be bound to call again upon the constituency, or such members to elect a person or persons until such date as the Election Commission may specify in this behalf.

**50. Special procedure at elections in constituencies where seats are reserved for scheduled castes or scheduled tribes.**—(1) The provisions of this section shall apply in relation to any election in a constituency where the seats to be filled include one or more seats reserved for the scheduled castes or for the scheduled tribes (hereinafter referred to as "reserved seats").

(2) If the number of candidates qualified to be chosen to fill the reserved seats is equal to the number of such seats, all those candidates shall be declared to be elected to fill the reserved seats, and the procedure laid down in section 49 shall be followed for filling the remaining seat or seats.

(3) If the number of candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, but the total number of candidates is equal to the total number of seats to be filled, the Returning Officer shall declare all the candidates to be duly elected to fill those seats.

(4) If the number of candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, and the total number of candidates also exceeds the total number of seats to be filled, the procedure laid down in sub-section (1) of section 49 shall be followed; and after the poll has been taken, the Returning Officer shall first declare those who, being qualified to be chosen to fill the reserved seats, have secured the largest number of votes, to be duly elected to fill the reserved seats, and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats.

*Illustration* —At an election in a constituency to fill four seats of which two are reserved there are six candidates A, B, C, D, E and F, and they secure votes in descending order, A securing the largest number. B, C and D are qualified to be chosen to fill the reserved seats, while A, E and F are not so qualified. The Returning Officer will first declare B and C duly elected to fill the two reserved seats and then declare A and D (not A and E) to fill the remaining two seats.

(5) If the number of candidates qualified to be chosen to fill the reserved seats is less than the number of such seats,—

(a) all those candidates shall be declared to be duly elected to fill reserved seats;

(b) the procedure laid down in section 49 shall be followed for filling the seats other than the reserved seats; and

(c) the appropriate authority shall, by notification in the official Gazette, call upon the constituency to elect a person or persons to fill the remaining reserved seat or seats within such time as may be fixed by the Election Commission and specified in the notification:

Provided that where a constituency having been already so called upon has failed to elect a person or the requisite number of persons to fill the reserved seat or seats, the appropriate authority shall not be bound to call again upon the constituency to elect a person or persons to fill the vacancy or vacancies until such date as the Election Commission may specify in this behalf.

(6) In this section, references to candidates shall be construed as references to candidates who were duly nominated and who have not withdrawn their candidatures in the manner and within the time specified in sub-section (1) of section 32.

**51. Eligibility of members of scheduled castes or scheduled tribes to hold seats not reserved for those castes or tribes.**—For the avoidance of doubt it is hereby declared that a member of the scheduled castes or of the scheduled tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seat under the Constitution and this Act.

## CHAPTER V

### *The Poll*

**52. Fixing time for poll.**—The appropriate authority shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed.

**53. Adjournment of poll in emergencies.**—(1) If at an election the proceedings at any polling station provided under section 20 or at the place fixed under sub-section (1) of section 24 for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, the failure of arrangements for taking the poll or other sufficient cause, the presiding officer for such polling station or the Returning Officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later and where the poll is so adjourned by a presiding officer, he shall forthwith inform the Returning Officer concerned.

(2) Whenever a poll is adjourned under sub-section (1), the Returning Officer shall immediately report the circumstances to the appropriate authority and the Election Commission, and shall, as soon as may be, with the previous approval of the Election Commission, appoint the day on which the poll shall recommence, and fix the polling station or place at which, and the hours during which, the poll will be taken, and shall not finally declare the result of the election until such adjourned poll shall have been completed and the votes cast thereat shall have been counted.

(3) In every such case as aforesaid, the Returning Officer shall notify in such manner as the Election Commission may direct the date, place and hours of polling fixed under sub-section (2).

(4) This section shall apply to any interruption or obstruction caused by persons being prevented by riot or open violence from proceeding to any polling station or place fixed for the poll as the case may be, as well as to any interruption or obstruction caused in any other manner by riot or open violence.

**54. Fresh poll in the case of destruction etc. of ballot boxes.**—(1) If at any election any ballot box or boxes is or are unlawfully taken out of the custody of the Returning Officer or of any presiding officer, or is or are in any way

tampered with, or is or are either accidentally or intentionally destroyed or lost, the election to which such ballot box or boxes relate shall be void, but only in respect of the polling at the polling station or stations provided under section 20 or the place fixed under sub-section (1) of section 24 for the poll, as the case may be, at which such ballot box or boxes was or were used and no further.

(2) Whenever the polling at any polling station or stations or at the place fixed for the poll shall become void under sub-section (1), the Returning Officer shall, as soon as practicable after the act or event causing such voidance has come to his knowledge, report the matter to the appropriate authority and to the Election Commission and shall, with the previous approval of the Election Commission, appoint a day for the taking of a fresh poll in such or every such polling station or in such place fixed for the poll and fix the hours during which the poll will be taken, and shall not count the votes cast at such election until such fresh poll shall have been completed

(3) In every such case as aforesaid the Returning Officer shall take a fresh poll in such or every such polling station or in such place fixed for the poll as aforesaid on the day so appointed by him, and shall notify the day so appointed and the hours of polling so fixed by him in such manner as the Election Commission may direct, and the provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.

**55. Manner of voting at elections.**—At every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

**56. Special procedure for voting by certain classes of persons.**—Provision may be made by rules made under this Act for enabling any of the following persons to give his vote by postal ballot, and not in any other manner, at an election in a constituency where poll is taken, namely—

- (a) a member of the Armed Forces of the Union to whom the provisions of sub-section (8) of section 20 of the Representation of the People Act, 1950 (XLIII of 1950), apply;
- (b) a person holding any office in India declared by the President to be an office to which the provisions of sub-section (4) of that section apply;
- (c) a person who is employed under the Government of India in a post outside India;
- (d) the wife of any such person as is referred to in clauses (a), (b) and (c) to whom the provisions of sub-section (6) of the said section 20 apply; and
- (e) any person attending on official duty at a polling station in any constituency under the orders of, or authority from, the Returning Officer of such constituency.

**57. Special procedure for preventing personation of voters.**—Provision may also be made by rules made under this Act for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him and for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger so as to prevent personation of voters

**58. Right to vote.**—(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 10 of the Representation of the People Act, 1950 (XLIII of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police, or is subjected to preventive detention under any law for the time being in force.

**59. Method of voting.**—(1) In plural member constituencies other than Council constituencies every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate.

(2) If an elector gives more than one vote to any one candidate in contravention of the provisions of sub-section (1), all the votes given by him to such candidate shall be void.

## CHAPTER VI

### *Counting of Votes*

**60. Counting of votes.**—At every election where a poll is taken, votes shall be counted by, or under the supervision of, the Returning Officer, and each candidate, his election agent and his counting agent, shall have a right to be present at the time of counting.

**61. Equality of votes.**—If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

**62. Declaration of result.**—When the counting of the votes has been completed, the Returning Officer shall forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

**63. Report of the result.**—As soon as may be after the candidates have been declared elected to a House of Parliament or of the Legislature of a State, the Returning Officer shall report the result of the election to the Secretary of that House, the appropriate authority and the Election Commission, and the appropriate authority shall cause to be published in the official Gazette the declarations containing the names of the elected candidates.

## CHAPTER VII

### *Multiple Elections*

**64. Vacation of seats when elected to both Houses of Parliament.**—(1) Any person who is chosen a member of both the House of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within ten days from the date of publication in the Gazette of India

of the declarations that he has been so chosen or, if such publications have been made on different dates, within ten days from the latter of such dates, intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

(2) In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

(3) Any intimation given under sub-section (1) shall be final and irrevocable.

**65. Vacation of seats by persons already members of one House on election to other House of Parliament.**—(1) If a person who is already a member of the House of the People and has taken his seat in such House is chosen a member of the Council of States, his seat in the House of the People shall, on the publication in the Gazette of India of the declaration that he has been so chosen, become vacant.

(2) If a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall, on the publication in the Gazette of India of the declaration that he has been so chosen, become vacant.

**66. Election to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.**—If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant.

## CHAPTER VIII

### *Publication of election results and nominations*

**67. Publication of results of elections to the Council of States and of names of persons nominated by the President.**—(1) After the elections held in pursuance of the notifications issued under sub-section (1) of section 8, there shall be notified by the appropriate authority in the official Gazette the names of the members elected by the elected members of the Legislative Assemblies of the States and for the various Council of States constituencies at the said elections together with the names of the persons nominated by the President to the Council under sub-clause (a) of clause (1) of article 80 or under any other provisions.

(2) After the elections held in any year in pursuance of the notifications issued under sub-section (2) of section 8, there shall be notified by the appropriate authority in the official Gazette the names of the members elected by the elected members of the Legislative Assemblies of the States and for the various Council of States constituencies at the said elections together with the names of any persons nominated by the President to the Council under sub-clause (a) of clause (1) of article 80 or under any other provisions.

(3) The notification of names under sub-section (1) or sub-section (2) shall be in addition to the publication of the declarations under section 63 and shall be made as soon as may be after the expiration of the time fixed for the election of members under sub-section (1) or, as the case may be, sub-section (2) of section 8, and after the publication of the notification or notifications containing the names of persons nominated by the President to the Council under sub-clause (a) of clause (1) of article 80 or under any other provisions.

**68. Publication of results of general elections to the House of the People and of names of persons nominated by the President.**—As soon as may be after the expiration of the time fixed for the election of members to the House of the People at any general election, there shall be notified by the appropriate authority in the official Gazette the names of the members elected for the various Parliamentary constituencies at such election together with the names of persons, if any, nominated by the President to that House under article 331

or under any other provisions, and such notification shall be in addition to the publication of the declarations under section 63.

**69. Publication of results of general elections to the State Legislative Assemblies and of names of persons nominated to such Assemblies.**—As soon as may be after the expiration of the time fixed for the election of members to the Legislative Assembly of a State at any general election, there shall be notified by the appropriate authority in the official Gazette the names of the members elected for the various Assembly constituencies at such election together with the names of persons, if any, nominated by the Governor or Rajpramukh, as the case may be, of the State under article 833 or under any other provisions and such notification shall be in addition to the publication of the declarations under section 63.

**70. Publication of results of elections to the State Legislative Councils and of names of persons nominated to such Councils.**—(1) After the elections held in pursuance of the notifications issued under sub-section (1) of section 13, there shall be notified by the appropriate authority in the official Gazette the names of the members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of the persons nominated by the Governor or Rajpramukh, as the case may be, of the State under sub-clause (e) of clause (3) of article 171.

(2) After the elections held in any year in pursuance of the notifications issued under sub-section (2) of section 13 there shall be notified by the appropriate authority in the official Gazette the names of the members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of any persons nominated by the Governor or Rajpramukh, as the case may be, under sub-clause (e) of clause (3) of article 171.

(3) The notification of names under sub-section (1) or sub-section (2) shall be in addition to the publication of the declarations under section 63 and shall be made as soon as may be after the expiration of the time fixed for the election of members under sub-section (1), or as the case may be, sub-section (2) of section 13, and after the publication of the notification containing the names of persons nominated by the Governor or the Rajpramukh, as the case may be, under sub-clause (e) of clause (3) of article 171.

## CHAPTER IX

### *Election expenses*

**71. Return of election expenses.**—(1) Within the prescribed time after every election there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate, a return of the election expenses of that person signed both by him and his election agent.

(2) Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the proscribed form by the candidate and his election agent made on oath or solemn affirmation before a Magistrate.

(3) Notwithstanding anything in this section, where owing to absence from India a candidate is unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only, and the candidate shall, within fourteen days after his return to India, cause to be lodged with the Returning Officer a declaration made on oath or solemn affirmation before a Magistrate in such form as may be prescribed.

**72. Maximum election expenses, etc.**—The maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with election shall be such as may be prescribed.

**73. Application of this Chapter to elections by the members of a State Legislative Assembly to fill seats in the Council of States or in the State Legislative Council.**—Except so far as may be prescribed, this Chapter shall not apply to an election by the members of the Legislative Assembly of a State to fill seats in the Council of States or to an election by the members of the Legislative Assembly of a State to fill seats in the Legislative Council of that State.

## PART VI

### DISPUTES REGARDING ELECTIONS

#### CHAPTER I

##### *Interpretation*

**74. Definitions.**—In this Part and in Parts VII and VIII, unless the context otherwise requires,—

- (a) "agent" includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate;
- (b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate;
- (c) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;
- (d) "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election;
- (e) "pleader" means any person entitled to appear and plead for another in a civil court and includes an advocate, a vakil and an attorney of a High Court;
- (f) "returned candidate" means a candidate whose name has been published under section 63 as duly elected.

#### CHAPTER II

##### *Presentation of Election Petitions to Election Commission*

**75. Election petitions.**—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

**76. Presentation of petitions.**—(1) An election petition against any returned candidate may be presented to the Election Commission, in such form and within such time as may be prescribed,—

- (a) by a candidate or elector on one or more of the grounds specified in clauses (a) to (c) of sub-section (1) of section 95, clauses (a) to (c) of sub-section (2) of that section and clauses (a) and (b) of section 96;
- (b) by an officer empowered in this behalf by the appropriate authority, on the ground that the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election.



(2) An election petition shall be deemed to have been presented to the Election Commission when it is delivered to the Secretary to the Commission or to such other officer, as may be authorised by the Election Commission in this behalf—

- (a) by the person making the petition; or
- (b) by a person authorised in writing in this behalf by the person making the petition; or
- (c) by registered post.

**77. Parties to the petition.**—A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election, other than himself if he was so nominated.

**78. Contents of petition.**—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

**79. Relief that may be claimed by the petitioner.**—A petitioner may claim any one of the following declarations:—

- (a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
- (c) that the election is wholly void.

**80. Petition when to be dismissed.**—If the provisions of section 76, section 78 or section 112 are not complied with, the Election Commission shall dismiss the petition:

Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure.

### CHAPTER III

#### *Trial of election petitions*

**81. Appointment of Election Tribunal.**—(1) If the petition is not dismissed under section 80 the Election Commission shall appoint an Election Tribunal for the trial of the petition.

(2) For the purpose of constituting such Tribunals the Election Commission shall obtain from the High Court of each State (other than Jammu and Kashmir)—

(a) a list of such officers of not less than 10 years' standing belonging to the judicial service of the State as are in the opinion of the High Court fit to be appointed as members of the Election Tribunals, and

(b) a list of advocates of that High Court who have been in practice for a period of not less than 10 years and who are in the opinion of the High Court fit to be appointed as such members,

and shall maintain the lists by making such alterations therein as the High Court may from time to time direct.

(3) Every Tribunal appointed under sub-section (1) shall consist of—

(a) a Chairman, who shall be a district judge selected by the Election Commission from the lists of judicial officers maintained by it under sub-section (2); and

(b) one other member, who shall be either a judicial officer or an advocate selected by the Election Commission from any of the lists maintained by it under sub-section (2):

Provided that where the petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no member of the Tribunal shall be selected from the list of judicial officers pertaining to another State except with the consent of the Government of the other State:

Provided further that nothing in this sub-section shall be deemed to prevent the appointment of a Chairman of the Tribunal before that of the other member.

(4) If during the course of the trial, any member of a Tribunal is for any reason unable to perform his functions or has to relinquish his membership, the Election Commission shall appoint another member in accordance with the provisions of sub-section (3), and upon his joining the Tribunal the trial shall be continued as if he had been on the Tribunal from the commencement of the trial:

Provided that the Tribunal may, if it thinks fit, recall and re-examine any of the witnesses already examined.

(5) References to the Tribunal in this Part shall, as respects any matter to be done before the commencement of the trial, be deemed to be references to the Chairman of the Tribunal.

(6) In this section, the expressions "district judge" and "judicial service" have the same meanings as in article 236.

**82. Connected petitions to be referred to same Tribunal.**—Where more petitions than one are presented in respect of the same election, the Election Commission shall refer all of them to the same Tribunal, which may, in its discretion, try them separately or in one or more groups.

**83. Place of trial.**—The trial shall be held at such place as the Election Commission may appoint:

Provided that a Tribunal may, in its discretion, sit for any part of the trial at any other place in the State in which the election to which the petition relates has taken place.

**84. Attendance of law officers.**—(1) The Tribunal may, in the case of an election petition in relation to an election to fill a seat in either House of Parliament, require the Attorney-General of India or the Advocate-General of the State in which the election has taken place or some person acting under the instructions of the Attorney-General or such Advocate-General, and in the case of an election petition in relation to an election to fill a seat in the House or either House of the Legislature of a State, require the Advocate-General of the State in which the election has taken place or some person acting under his instructions, to attend at the trial.

(2) The Attorney-General or the Advocate-General or the person acting under the instructions of the Attorney-General or the Advocate-General, as the case may be, shall, when so required, attend at the trial and shall take such part therein as the Tribunal may direct.

**85. Procedure before the Tribunal.**—(1) The Tribunal shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be

published in the official Gazette, and at any time within fourteen days after such publication, any other candidate shall, subject to the provisions of section 114, be entitled to be joined as a respondent.

(2) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits:

Provided that it shall only be necessary for the Tribunal to make a memorandum of the substance of the evidence of any witness examined by the Tribunal:

Provided further that the Tribunal shall have the discretion to refuse to examine any witness or witnesses if it is of the opinion that their evidence is **not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.**

(3) The provisions of the Indian Evidence Act, 1872 (I of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

(4) Notwithstanding anything contained in section 80, the Tribunal may dismiss an election petition which does not comply with the provisions of section 76, section 78 or section 112:

Provided that an election petition shall not be dismissed under this subsection for non-compliance with the provision of section 76 as to the presentation of the petition within the prescribed time if the failure to comply with such provision has been condoned by the Election Commission under the proviso to section 80.

**86. Appearance before Tribunal.**—Any appearance, application or act before the Tribunal may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, whenever the Tribunal so directs, be made by the party in person.

**87. Powers of the Tribunal.**—The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters:—

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit; and
- (g) issuing commissions for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

**Explanation.**—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Tribunal shall be the limits of the State in which the election was held.

**88. Documentary evidence.**—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

**89. Secrecy of voting not to be infringed.**—No witness or other person shall be required to state for whom he has voted at an election. .

**90. Answering of criminating questions and certificate of indemnity.**—(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture:

Provided that—

- (a) a witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Tribunal; and
- (b) an answer given by a witness to a question put by or before the Tribunal shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code (Act XLV of 1860) or Part VII of this Act arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law.

**91. Expenses of witnesses.**—The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Tribunal to such person, and shall, unless the Tribunal otherwise directs, be deemed to be part of the costs.

**92. Recrimination when seat claimed.**—(1) When at a trial of an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of the publication of the election petition under section 85, given notice to the Tribunal of his intention to do so and has also given the security and the further security referred to in sections 112 and 113 respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and list of particulars required by section 78 in the case of an election petition and shall be signed and verified in like manner.

**93. Decision of the Tribunal.**—At the conclusion of the trial of an election petition the Tribunal shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of the returned candidate to be void; or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or
- (d) declaring the election to be wholly void.

**94. Other orders to be made by the Tribunal.**—(1) At the time of making an order under section 93 the Tribunal shall also make an order—

- (a) where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording—
- (i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of,

any candidate or his agent at the election, and the nature of that corrupt or illegal practice; and

- (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice, together with any such recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under sections 136 to 138; and

- (b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid:

Provided that no person shall be named in the order under sub-clause (ii) of clause (a) unless he has been given a reasonable opportunity of showing cause why he should not be so named.

(2) Any order as to costs under clause (b) of sub-section (1) may include a direction for the payment of costs to the law officer attending the trial in pursuance of any requisition of the Tribunal under section 84.

**95. Grounds for declaring election to be void.**—(1) If the Tribunal is of opinion---

- (a) that the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election; or
- (b) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section, to vote or not to vote in any particular way at the election; or
- (c) that in the case of the first elections under this Act, the result of the election has been materially affected by the improper acceptance or rejection of any nomination,

the Tribunal shall declare the election to be wholly void.

(2) Subject to the provisions of sub-section (3), if the Tribunal is of opinion---

- (a) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; or
- (b) that any corrupt practice specified in section 118 has been committed in the interests of a returned candidate; or
- (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form,

the Tribunal shall declare the election of the returned candidate to be void.

(3) If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in section 118, but the Tribunal is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;

- (b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election,
  - (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election; and
  - (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate or any of his agents,
- then the Tribunal may decide that the election of the returned candidate is not void.

**96. Grounds for which a candidate other than the returned candidate may be declared to have been elected.**—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Tribunal is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

**97. Procedure in case of an equality of votes.**—If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then—

- (a) any decision made by the Returning Officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and
- (b) in so far as that question is not determined by such a decision, the Tribunal shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

**98. Supply of orders to the Election Commission and the transmission of the records of the case.**—The Tribunal shall, after announcing the orders made under sections 93 and 94, send a copy thereof to the Election Commission and the records of the case to the District Judge of the district within which the place of trial appointed under section 83 is situate, or if such place is in a presidency-town, to the Chief Judge of the Court of Small Causes having jurisdiction there, as the case may be.

**99. Difference of opinion among the members of the Tribunal.**—(1) If during the trial of an election petition there is a difference of opinion among the members of the Tribunal on any matter, the opinion of the Chairman shall, subject to the opinion, if any, expressed by the High Court on such matter on a reference made to that Court under sub-section (2), prevail.

(2) If at the conclusion of the trial of an election petition there is a difference of opinion among the members of the Tribunal on any question regarding the orders to be made under section 93 or section 94, the Tribunal shall state the question and refer it together with the opinion of each of its members, to the High Court for its opinion.

(3) The High Court shall, after giving the parties an opportunity of being heard, decide the question so referred for its opinion, and shall cause a copy

of its opinion to be transmitted to the Tribunal; and the Tribunal shall, on receipt thereof, proceed to dispose of the election petition in conformity with the opinion of the High Court.

(4) Any opinion expressed by the High Court on an election petition referred to it by the Tribunal under this section shall be final and conclusive and shall be deemed to be the opinion of the Tribunal for the purposes of this Act.

(5) For the purposes of this section "the High Court" means—

(a) where the election to which the appeal relates has taken place in a Part A State or a Part B State, the High Court of that State;

(b) where such election has taken place in Ajmer or Vindhya Pradesh, the High Court at Allahabad;

(c) where such election has taken place in Bhopal, the High Court at Nagpur;

(d) where such election has taken place in Bilaspur, Delhi or Himachal Pradesh, the High Court of Punjab;

(e) where such election has taken place in Coorg, the High Court at Madras;

(f) where such election has taken place in Kutch, the High Court at Bombay; and

(g) where such election has taken place in Manipur or Tripura, the High Court of Assam.

**100. Orders of the Tribunal to be final.**—Every order of the Tribunal made under this Act shall be final and no appeal shall lie therefrom to any authority or power.

**101. Transmission of final order to the Election Commission etc. and its publication.**—As soon as may be after the receipt of any order made by the Tribunal under section 93 or section 94, the Election Commission shall forward copies of the order to the appropriate authority and to the Speaker or Chairman, as the case may be, of the House concerned, and shall cause the order to be published in the Gazette of India and in the official Gazette of the State concerned.

**102. Orders to take effect only on publication.**—An order of the Tribunal under section 93 or section 94 shall not take effect until it is published in the Gazette of India under section 101.

#### CHAPTER IV

##### *Withdrawal and abatement of election petitions.*

**103. Withdrawal of petitions before appointment of Tribunal.**—An election petition may be withdrawn only by leave of the Election Commission if an application for its withdrawal is made before any Tribunal has been appointed for the trial of such petition.

**104. Withdrawal of petitions after appointment of Tribunal.**—(1) Where an application for withdrawal of an election petition is made after a Tribunal has been appointed for the trial of such petition, the election petition may be withdrawn only by leave of the Tribunal.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the official Gazette.

**105. Procedure for withdrawal of petitions before the Election Commission or the Tribunal.**—(1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted if in the opinion of the Election Commission or of the Tribunal, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted—

(a) the petitioner shall, where the application has been made to the Tribunal, be ordered to pay the costs of the respondents thereto—before incurred or such portion thereof as the Tribunal may think fit;

(b) notice of the withdrawal shall be published in the official Gazette by the Election Commission or by the Tribunal, as the case may be;

(c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions of section 112 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit.

**106. Report of withdrawal by the Tribunal to the Election Commission.—**

When an application for withdrawal is granted by the Tribunal and no person has been substituted as petitioner under clause (c) of sub-section (3) of section 105, in place of the party withdrawing, the Tribunal shall report the fact to the Election Commission.

**107. Abatement of election petitions.—**An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners:

Provided that where such sole petitioner was an officer empowered under clause (b) of sub-section (1) of section 76, the proceedings shall be continued by such other officer as may be empowered in this behalf by the appropriate authority.

**108. Abatement of petition before appointment of Tribunal.—**If an election petition abates under section 107 before a Tribunal has been appointed for the trial of the petition, notice of the abatement shall be published in the official Gazette by the Election Commission.

**109. Abatement of petition after appointment of Tribunal.—**Where an election petition abates under section 107 after a Tribunal has been appointed for the trial of the petition, notice of the abatement shall be published in the official Gazette by the Tribunal.

**110. Substitution on death of petitioner.—**After a notice of the abatement of an election petition is published under section 108 or section 109, any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions of section 112 as to security shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit.

**111. Abatement or substitution on death of respondent.—**If before the conclusion of the trial of an election petition, the respondent dies or gives notice that he does not intend to oppose the petition, the Tribunal shall cause notice of such event to be published in the official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Tribunal may think fit.



## CHAPTER V

*Costs and security for costs*

**112. Deposit of security.**—Except where an election petition is presented under clause (b) of sub-section (1) of section 76, the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition.

**113. Further security for costs.**—During the course of the trial of an election petition the Tribunal may at any time call upon the petitioner to give such further security for costs as it may direct, and may, if he fails to do so, dismiss the petition:

Provided that the petitioner shall not be required to give any security where the petition has been presented under clause (b) of sub-section (1) of section 76.

**114. Security for costs from a respondent.**—No person shall be entitled to be joined as a respondent under sub-section (1) of section 85 unless he has given such security for costs as the Tribunal may direct.

**115. Costs.**—(1) Costs including pleaders fees shall be in the discretion of the Tribunal.

(2) The Tribunal may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

**116. Payment of costs out of security deposits and return of such deposits.**—If in any final order as to costs under the provisions of this Part there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Part, on an application made in writing in that behalf to the Election Commission by the person in whose favour the costs have been awarded within a period of six months from the publication of such final order under section 101; and if there is any balance left of any of the said security deposits after payment of such costs, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of six months, the whole of the said security deposits may on an application made in that behalf in writing to the Election Commission by the person by whom the deposits have been made, or if such person dies after making such deposits, by the legal representatives of such person, be returned to the said person or to his legal representatives, as the case may be.

**117. Execution of orders as to costs.**—Any final order as to costs under the provisions of this Part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency town, before the Court of Small Causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion thereof may be recovered by an application made under section 116, no application shall lie under this section within a period of six months from the date of publication of such final order under section 101 unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under section 116 owing to the insufficiency of the amount of the security deposits referred to in that section.

## PART VII

## CORRUPT AND ILLEGAL PRACTICES AND ELECTORAL OFFENCES

## CHAPTER I

*Corrupt Practices*

**118. Corrupt practices.**—The following shall be deemed to be corrupt practices for the purposes of this Act—

(1) Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing—

- (a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or
- (b) an elector to vote or refrain from voting at an election, or as a reward to—

- (i) a person for having so stood or not stood, or for having withdrawn his candidature; or

- (ii) an elector for having voted or refrained from voting.

*Explanation.*—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the return of election expenses referred to in section 71.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right.

Provided that—

- (a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who—

- (i) threatens any candidate, his agent, or any elector, or any person in whom a candidate, his agent or an elector is interested, with any injury of any kind; or

- (ii) induces or attempts to induce a candidate, his agent or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate, agent or elector within the meaning of this clause;

- (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper in the name of any other person,

whether living or dead, or in a fictitious name, or by a person for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

(4) The removal of a ballot paper from the polling station during polling hours by a candidate or his agent, or by any other person with the connivance of a candidate or his agent.

(5) The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(6) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent for the conveyance of any voter to or from any place for the purpose of recording his vote:

Provided that the hiring of a vehicle or vessel by a voter or by several voters at their joint costs for the purpose of conveying him or them to or from the polling station shall not be deemed to be a corrupt practice under this clause.

*Explanation.*—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.

(7) The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule thereunder.

(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

**119. Certain other corrupt practices.**—The following shall also be deemed to be corrupt practices for the purposes of this Act:—

(1) Any act specified in clauses (1) to (8) of section 118, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

(2) The application by a person at an election for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

(3) The receipt of, or agreement to receive, any gratification whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

*Explanation.*—For the purposes of this clause the term "gratification" has the same meaning as it has for the purposes of clause (1) of section 118.

(4) The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return.

(5) The use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for furtherance of the prospects of a candidate's election.

## CHAPTER II

### *Illegal Practices*

**120. Illegal practices.**—The following shall be deemed to be illegal practices for the purposes of this Act:—

(1) The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate.

(2) The hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

(3) The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

## CHAPTER III

### *Electoral Offences*

**121. Prohibition of election meetings on the election day and the day preceding such day.**—(1) No person shall convene, hold or attend any political meeting within any constituency on the date or dates on which poll is taken for an election in that constituency or on the day immediately preceding that date or the first of those dates.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

**122. Disturbances at election meetings.**—(1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with fine which may extend to two hundred and fifty rupees.

(2) This section applies to any political meeting held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

**123. Maintenance of secrecy of voting.**—(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

**124. Officers, etc. at elections not to act for candidates or to influence voting.**—(1) No person who is a Returning Officer, or an Assistant Returning Officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the Returning Officer or the presiding officer to perform any duty in connection with an election shall act as an agent of a candidate in the conduct or the management of the election.

(2) No such person as aforesaid, and no member of a police force, shall endeavour—

- (a) to persuade any person to give his vote at an election, or
- (b) to dissuade any person from giving his vote at an election, or
- (c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment which may extend to three months or with fine or with both.

**125. Prohibition of canvassing in or near polling stations.**—(1) No person shall, during the hours fixed for the poll at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred yards of the polling station, namely:—

- (a) canvassing for votes; or
- (b) soliciting the vote of any elector; or
- (c) persuading any elector not to vote for any particular candidate; or
- (d) persuading any elector not to vote at the election; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under this section shall be cognizable.

**126. Penalty for disorderly conduct in or near polling stations.**—(1) No person shall, during the hours fixed for the poll at any polling station,—

- (a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loud speaker, or
- (b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof,

so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the contravention of, the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine or with both.

(3) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1), and may seize any apparatus used for such contravention.

**127. Penalty for misconduct at the polling station.**—(1) Any person who, during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

**128. Penalty for illegal hiring or procuring of conveyances at elections.**—If any person is guilty of any such corrupt practice as is specified in clause (6) of section 118 at or in connection with an election, he shall be punishable with fine which may extend to two hundred and fifty rupees.

**129. Breaches of official duty in connection with elections.**—(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the Electoral Registration Officers, Returning Officers, Assistant Returning Officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with the preparation of an electoral roll, the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act or by or under the Representation of the People Act, 1950.

**130. Removal of ballot papers from polling station to be an offence.**—(1) Any person who at any election fraudulently takes or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may before such person leaves the polling station arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be cognizable.

**131. Other offences and penalties therefor.**—(1) A person shall be guilty of an electoral offence if at any election he—

- (a) fraudulently defaces or fraudulently destroys any nomination paper;  
or
- (b) fraudulently defaces or fraudulently destroys any ballot paper or ~~the~~ official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot;  
or
- (c) without due authority supplies any ballot paper to any person; or
- (d) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (e) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election, or
- (f) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an electoral offence under this section shall—

- (a) if he is a Returning Officer or an Assistant Returning Officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;

- (b) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act or by or under the Representation of the People Act, 1950.

(4) An offence punishable under clause (b) of sub-section (2) shall be cognizable

**132. Special provision for complaint regarding certain offences.**—No court shall take cognizance of any offence punishable under section 129 or under clause (a) of sub-section (2) or section 131 unless there is a complaint made by order of, or under authority from, the Election Commission or a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State concerned.

**133. Amendment of Act V of 1898.**—In the Code of Criminal Procedure, 1898—

- (a) in section 106, after the word and figures "section 127", the words, figures and letter "and section 171-F, so far as it relates to the offence of personation" shall be inserted,

(b) in Schedule II—

- (i) in the entry relating to section 171-F of the Indian Penal Code (Act XLV of 1860), from the paragraph in column 2, the words "and personation" shall be omitted;

- (ii) after the paragraph in column 2 of the said entry as so amended, the following paragraph shall be inserted, namely:—

"Personation at an election.";

(iii) in column 3, opposite the paragraph inserted by sub-clause (ii), the following paragraph shall be inserted, namely:—

“May arrest without warrant.”;

(iv) in columns 4, 5, 6, 7 and 8, opposite the paragraph inserted by sub-clause (ii), the word “Ditto” shall be inserted;

(v) in the entry relating to section 171-G of the Indian Penal Code, in column 3, for the word “Ditto” the words “shall not arrest without warrant” shall be substituted.

## PART VIII

### DISQUALIFICATIONS

#### CHAPTER I

##### *Disqualifications for membership*

**134. Offences entailing disqualification.**—(1) The following offences shall entail disqualification for membership of Parliament and of the Legislature of every State, namely:—

(a) offences punishable with imprisonment under section 171E or 171F of the Indian Penal Code, and

(b) offences punishable under section 130 or clause (a) of sub-section (2) of section 131 of this Act.

(2) The period of such disqualification shall be six years from the date of the conviction for the offence.

**135. Corrupt and illegal practices entailing disqualifications.**—(1) The following corrupt or illegal practices shall entail disqualification for membership of Parliament and of the Legislature of every State, namely:—

(a) corrupt practices specified in section 118 or section 119 in relation to elections as defined in section 2; and

(b) illegal practices specified in section 120 in relation to elections as defined in section 2 other than the elections by members of the Legislative Assembly of a State to fill seats in the Council of States or the Legislative Council of that State.

(2) The period of such disqualification shall be six years in the case of a corrupt practice, and four years in the case of an illegal practice, counting from the date on which the finding of the Election Tribunal as to such practice takes effect under this Act.

#### CHAPTER II

##### *Disqualification for voting*

**136. Disqualification arising out of conviction and corrupt practices.**—If any person after the commencement of this Act—

(a) is convicted of an offence punishable under any of the provisions of Chapter III of Part VII of this Act or Chapter IX A of the Indian Penal Code (Act XLV of 1860) with imprisonment for a term exceeding six months, or

(b) is, upon the trial of an election petition under Part VI of this Act, found guilty of any corrupt practice,

he shall, for a period of six years from the date of the conviction or from the date on which such finding takes effect, be disqualified from voting at any election.

**137. Disqualification arising out of illegal practices.**—If, in relation to any election, (other than an election by the members of the Legislative Assembly,



of a State to fill seats in the Council of States or in the Legislative Council of that State), any person is, upon the trial of an election petition under Part VI of this Act, found guilty of illegal practice, he shall be disqualified for voting at any election for a period of four years from the date on which such finding takes effect.

**138. Disqualification arising out of failure to lodge return of election expenses.**—If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which the provisions of Chapter IX of Part V of this Act apply, or if such a return is found either upon the trial of an election petition under Part VI of this Act or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which the return was required to be lodged.

**139. Removal of disqualifications.**—Any disqualification under this Chapter may be removed by the Election Commission for reasons to be recorded by it in writing.

### CHAPTER III

#### *Other Disqualifications*

**140. Disqualification for being an election agent.**—Any person who is for the time being disqualified under the foregoing provisions of this Part for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.

**141. Disqualification for holding certain offices.**—Any person who has been convicted of an offence under section 171-E or section 171-F of the Indian Penal Code (Act XLV of 1860), or has been disqualified from exercising any electoral right for a period of not less than five years on account of any corrupt practices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

- (a) being appointed to, or acting in, any judicial office;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;
- (c) being elected or sitting or voting as a member of any local authority;  
or
- (d) being appointed or acting as a trustee of a public trust:

Provided that any such disqualification may be removed by the Election Commission.

### PART IX

#### BYE-ELECTIONS

**142. Casual vacancies in the Council of States.**—When before the expiration of the term of office of a member elected to the Council of States, his seat becomes vacant or is declared vacant or his election to the Council of States is declared void, the President shall by a notification in the Gazette of India call upon the members of the Legislative Assembly of the State concerned or the Council of States constituency concerned, as the case may be, to elect a person for the purpose of filling the vacancy so caused within

such time as may be appointed in this behalf by the Election Commission and specified in the said notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

**143. Casual vacancies in the House of the People.**—(1) When the seat of a member elected to the House of the People becomes vacant or is declared vacant or his election to the House of the People is declared void, the President shall, subject to the provisions of sub-section (2) by a notification in the Gazette of India, call upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy so caused within such time as may be appointed in this behalf by the Election Commission and specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the scheduled castes or for the scheduled tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the scheduled castes or to the scheduled tribes, as the case may be.

**144. Casual vacancies in the State Legislative Assemblies.**—(1) When the seat of a member elected to the Legislative Assembly of a State becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the Governor or the Rajpramukh of the State, as the case may be, shall, subject to the provisions of sub-section (2), by a notification in the official Gazette, call upon the Assembly constituency concerned to elect a person for the purpose of filling the vacancy so caused within such time as may be appointed in this behalf by the Election Commission and specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the scheduled castes or for the scheduled tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the scheduled castes or to the scheduled tribes, as the case may be.

**145. Casual vacancies in the State Legislative Councils.**—When before the expiration of the term of office of a member elected to the Legislative Council of a State, his seat becomes vacant or is declared vacant or his election to the Legislative Council is declared void, the Governor, or the Rajpramukh of the State as the case may be, shall by a notification in the official Gazette call upon the Council constituency concerned or the members of the Legislative Assembly of the State, as the case may be, to elect a person for the purpose of filling the vacancy so caused, within such time as may be appointed in this behalf by the Election Commission and specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

## PART X

### MISCELLANEOUS

**146. List of members of the State Legislative Assembly to be maintained by the Returning Officer.**—(1) The Returning Officer for an election by the members of the Legislative Assembly of a State to fill seats in the Council of States

or in the Legislative Council of the State shall for the purposes of such election maintain at his office in the prescribed manner and form a list of members of that Legislative Assembly.—

(2) Copies of the list shall be made available in the prescribed manner to members of the Legislative Assembly.

**147. Extension of time for completion of election.**—(1) It shall be competent for the Election Commission for reasons which it considers sufficient to extend the time appointed by such Commission under the provisions of sub-section (1) or sub-section (2) of section 8, or section 10 or section 12, or sub-section (1) or sub-section (2) of section 13 for the completion of any general or biennial election, or the time appointed by such Commission under any of the provisions of Part IX for the completion of any election to fill a casual vacancy.

(2) When the time for the completion of any election is so extended, the President or the Governor or Rajpramukh of the State, as the case may be, shall by notification in the official Gazette make the necessary amendments in the notification issued in respect of such election under any of the provisions referred to in sub-section (1).

**148. Term of office of members of the Council of States.**—(1) The term of office of a member elected to fill the seat in the Council of States to be filled by the representative of the States of Ajmer and Coorg and of a member nominated to fill the seat in that Council to be filled by the representative of the States of Manipur and Tripura, other than a member chosen to fill a casual vacancy in either of those seats, shall be two years.

(2) Subject as aforesaid, the term of office of a member of the Council of States, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council of States the President shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

(3) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

**149. Commencement of term of office of members of the Council of States.**—(1) The term of office of a member of the Council of States whose name is required to be notified in the official Gazette under section 67 shall begin on the date of such notification.

(2) The term of office of a member of the Council of States whose name is not required to be notified under section 67 shall begin on the date of publication in the official Gazette of the declaration containing the name of such person as elected under section 63 or of the notification issued under sub-clause (a) of clause (1) of article 80 or under any other provision announcing the nomination of such person to the Council of States, as the case may be.

**150. Term of office of members of State Legislative Councils.**—(1) The term of office of a member of the Legislative Council of a State, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council the Governor or the Rajpramukh, as the case may be, shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order, that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

(2) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

**151. Commencement of the term of office of members of the Legislative Councils.**—(1) The term of office of a member of the Legislative Council of a State whose name is required to be notified in the official Gazette under section 70 shall begin on the date of such notification.

(2) The term of office of a member of the Legislative Council of a State whose name is not required to be notified under section 70 shall begin on the date of publication in the official Gazette of the declaration containing the name of such person as elected under section 63 or of the notification issued under sub-clause (e) of clause (3) of article 171, announcing the nomination of such person to the Council, as the case may be.

**152. Return or forfeiture of deposits.**—(1) If a candidate by whom the deposit referred to in section 29 or in that section read with sub-section (3) of section 34 has been made withdraws his candidature in the manner and within the time specified in sub-section (1) of section 32 or in that sub-section read with the said sub-section (3), or if the nomination of any such candidate is rejected, the deposit shall be returned to him; and if a candidate dies before the commencement of the poll, the deposit made by him shall be returned to his legal representatives.

(2) If a candidate nominated under section 27 by whom a deposit has been made under section 29 is not elected, and the number of votes polled by him does not exceed one-eighth of the total number of votes polled or, in the case of a constituency returning more than one member, one eighth of the total number of votes polled divided by the total number of members to be elected, the deposit shall be forfeited to the appropriate authority.

(3) For the purpose of sub-section (2), the number of votes polled shall be deemed to be the number of ballot papers, other than rejected ballot papers, counted.

(4) The deposit made by a candidate under section 29 or under that section read with sub-section (3) of section 34, shall, where it is not forfeited under sub-section (2), be returned to him after the publication of the result of the election in the official Gazette:

Provided that if a candidate is duly nominated at a general election in more than one Parliamentary constituency or Council of States or Assembly constituency, not more than one of the deposits made by him shall be returned, and the remainder shall be forfeited to the appropriate authority:

Provided further that if a candidate is duly nominated at an election in more than one Council constituency or at an election in a Council constituency and an election by the members of the State Legislative Assembly to fill seats in the State Legislative Council, not more than one of the deposits made by him shall be returned, and the remainder shall be forfeited to the State Government.

**153. Requisitioning of premises, vehicles, etc. for election purposes.**—(1) If it appears to the State Government that in connection with an election held within the State—

- (a) any premises are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken, or
- (b) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station, or transport of members of the police force for maintaining order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election,

that Government may by order in writing requisition such premises, or such vehicle, vessel or animal, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the State Government to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) In this section—

- (a) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;
- (b) "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

**154. Payment of compensation.**—(1) Whenever in pursuance of section 153 the State Government requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

- (i) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality;
- (ii) if in consequence of the requisition of the premises the person interested is compelled, to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the State Government to an arbitrator appointed in this behalf by that Government for determination, and shall be determined in accordance with the decision of such arbitrator

*Explanation.*—In this sub-section, the expression "person interested" means any person claiming an interest in compensation payable for the requisitioning of any premises under section 153.

(2) Whenever in pursuance of section 153 the State Government requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the State Government on the basis of the fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal.

Provided that where the owner of such vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this section as

the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the State Government in this behalf may decide.

**155. Power to obtain information.**—The State Government may, with a view to requisitioning any property under section 153 or determining the compensation payable under section 154, by order, require any person to furnish to such authority as may be specified in the order such information in his possession relating to such property as may be so specified.

**156. Powers of entry into and inspection of premises etc.**—(1) Any person authorised in this behalf by the State Government may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether and if so, in what manner an order under section 153 should be made in relation to such premises, vehicle, vessel or animal or with a view to securing compliance with any order made under that section.

(2) In this section the expressions "premises" and "vehicle" have the same meanings as in section 153.

**157. Eviction from requisitioned premises.**—(1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 153 may be summarily evicted from the premises by any officer empowered by the State Government in this behalf.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

**158. Release of premises from requisition.**—When any premises requisitioned under section 153 is to be released from requisition the possession thereof shall be delivered to the person deemed by the State Government to be the owner of such premises or to any other person from whom possession was taken at the time when the premises was requisitioned, and such delivery of possession shall be a full discharge of the State Government from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

**159. Delegation of functions of the State Government with regard to requisitioning.**—The State Government may, by notification in the official Gazette, direct that any powers conferred or any duty imposed on that government by any of the provisions of sections 153 to 158 shall, under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer or class of officers as may be so specified.

**160. Penalty for contravention of any order regarding requisitioning.**—If any person contravenes any order made under section 153 or section 155, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

## PART XI

### GENERAL

**161. Power to make rules.**—(1) The Central Government may, after consulting the Election Commission, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the duties of presiding officers and polling officers at polling stations;
- (b) the checking of voters by reference to the electoral roll;
- (c) the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability;
- (d) the procedure to be followed in respect of the tender of vote by a person representing himself to be an elector after another person has voted as such elector;
- (e) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;
- (f) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;
- (g) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;
- (h) any other matter required to be prescribed by this Act.

**162. Jurisdiction of civil courts barred.**—No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election

**163. Repeal of Act XXXIX of 1920** The Indian Elections Offences and Enquiries Act, 1920, is hereby repealed:

Provided that such repeal shall not affect any inquiry in respect of an election to fill any casual vacancy referred to in clause (1) or clause (2) of article 388 by an Election Tribunal appointed for that purpose by the Election Commission, and the provisions of the said Act shall apply in relation to such election and inquiry notwithstanding such repeal subject to any order made by the President under the said clause (1) or clause (2), as the case may be.

#### STATEMENT OF OBJECTS AND REASONS

During the last Budget Session of Parliament the Representation of the People Act, 1950, was passed. It did not contain all the provisions relating to elections but merely provided for the allocation of seats in, and the delimitation of, constituencies for the purpose of elections to the House of the People and the Legislatures of States, the qualifications of voters at such elections and the preparation of electoral rolls. Provisions for the actual conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of these Houses, the corrupt and illegal practices and other election offences, and the decision of election disputes were all left to be made in a subsequent measure. The Bill seeks to make those provisions.

B. R. AMBEDKAR.

NEW DELHI;

The 13th December, 1950.

## NOTES ON CLAUSES

*Clauses 3 to 6.*—Articles 84 and 173 of the Constitution have laid down certain qualifications for membership of Parliament and of the State Legislatures and have left it to Parliament to prescribe such further qualifications as it may consider necessary. Clauses 3 to 6 seek to prescribe these further qualifications for membership.

It is proposed to amend the Representation of the People Act, 1950, to include therein appropriate provisions for the filling of the seat in the Council of States allotted to the States of Manipur and Tripura by nomination by the President and for the filling of the seats in the said Council allotted to other Part C States by election held in territorial constituencies (to be known as Council of States constituencies) by special electorates constituted for the purpose based on a restricted franchise.

*Clause 4* enables any person whose name is included in the electoral roll of any Parliamentary constituency to stand as a candidate for any seat, not only in that constituency, but also in any other Parliamentary constituency. This clause also enables a person whose name is included in the electoral roll of a Parliamentary constituency to stand as a candidate for any seat in the House of the People reserved for scheduled castes in any State if such person is a member of any of the scheduled castes whether of that State or of any other State.

Provision has been made in *clause 5* for enabling any person whose name is included in the electoral roll of any Assembly constituency in a State to stand as a candidate for any seat in that constituency or in any other Assembly constituency of that State.

*Clause 6* enables any person whose name is included in the electoral roll of any Assembly constituency in a State to stand as a candidate for any seat in any Council constituency in that State.

*Clause 7.*—Articles 102(1) and 191(1) of the Constitution have laid down certain disqualifications for membership of Parliament and of the Legislatures of States and have left it to Parliament to prescribe by law such further disqualifications as it may consider necessary. *Clause 7* provides for these further disqualifications for membership of Parliament or of a State Legislature. The provisions included in this clause are based on similar provisions contained in section 69 of the Government of India Act, 1935.

*Clauses 8, 10, 12 and 13* provide that the notification calling upon a constituency or the members of the Legislative Assembly of a State to elect members at a general election or, in the case of elections to fill seats in the Council of States or the Legislative Council of a State, at a biennial election, shall be issued by the President where the election is to fill a seat in either House of Parliament and by the Governor or Rajpramukh of the State where the election is to fill a seat in the House or either House of the Legislature of a State, and that the date for the completion of the election to be specified in any such notification shall be the date fixed in this behalf by the Election Commission.

*Clauses 25 to 34* deal with nomination of candidates at elections, deposits at the time of nomination, scrutiny of nominations and withdrawal of candidatures. These provisions are more or less on the lines of similar provisions at present in force in the various States for elections to the Legislatures of States. Power has been conferred on the Returning Officers by the proviso to sub-clause (5) of clause 28 of the Bill to permit any clerical error in the nomination paper to be corrected, or to direct any clerical or printing error in the electoral roll to be overlooked, so as to minimise the possibility of rejection



of nomination papers on technical grounds. A lower amount of deposit has been prescribed for candidates belonging to the scheduled castes and scheduled tribes.

*Clause 35* provides for appeal from the decision of the Returning Officer accepting or rejecting any nomination to an appellate authority to be appointed in this behalf by the Election Commission. It has been provided in this clause that the decision of the appellate authority and, subject only to such decision, the decision of the Returning Officer accepting or rejecting a nomination paper will be final, so that any question as to the validity of any nomination paper may not be raised afterwards before the Election Tribunal. This procedure will avoid the incurring of large expenditure in contesting an election which is afterwards declared void on account of the invalidity of a nomination paper. In view of the shortness of time within which the first elections will have to be held the application of the provisions of this clause to the first elections has been specifically excluded.

*Clauses 50 and 51.*—*Clause 50* sets out the special procedure to be followed at elections in constituencies where seats are reserved for scheduled castes or scheduled tribes. *Clause 51* provides that a member of the scheduled castes or of the scheduled tribes shall not be disqualified to hold a seat not reserved for those castes or tribes if he is otherwise qualified to hold such seat. Accordingly, the procedure to be followed in declaring the results of elections in constituencies where certain seats are reserved for those castes or tribes has been explained in detail in *clause 50* having regard to the provisions of *clause 51*.

*Clause 53* provides for the adjournment of poll at an election in case of riot or open violence or on account of any natural calamity or failure of arrangements for taking the poll or other sufficient cause and *clause 54* authorises the holding of a fresh poll at an election in the case where ballot boxes are tampered with, destroyed or lost and it has been provided in those clauses that the Returning Officer shall not count the votes cast at any such election until such adjourned or fresh poll shall have been completed.

*Clause 56* authorises the making of a provision by rule for enabling any such person as is referred to in sub-section (3) or sub-section (4) of section 20 of the Representation of the People Act, 1950, and the wife of any such person to whom the provisions of sub-section (6) of the said section apply and also any person attending on official duty at a polling station to give his vote by postal ballot. This special procedure is necessary to enable the classes of persons described above who will not be able to attend the polling station to record their votes without going there.

*Clause 57* authorises the making of a provision by rule for enabling the thumb or any other finger of every intending voter to be marked with indelible ink before delivery of ballot paper to him for voting and for prohibiting the delivery of any ballot paper to any person who has already such mark on his thumb or other finger so as to prevent personation of voters.

*Clause 58* prescribes certain limitations on the right of a person to vote. Sub-clause (5) of this clause prohibits the voting by any person who is confined in a prison or is in the lawful custody of the police or is subjected to preventive detention. It will obviously be unsafe to allow this class of persons liberty to go to polling stations for the purpose of voting; and the provision of special guards, etc., for that purpose will also be entirely impracticable.

*Clause 59* prescribes the method of voting to be followed in certain plural member constituencies and is based on a previous decision taken by the Constituent Assembly that in plural member constituencies the voting shall be distributive. It is accordingly provided in this clause that, in plural member

constituencies other than Council constituencies, every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate. It has been further provided in this clause that if a person gives more than one vote to any candidate in contravention of the said provision all the votes given to such candidate shall be void.

*Clauses 64 and 65.*—Clause (1) of article 101 of the Constitution prohibits membership of both Houses of Parliament and empowers Parliament to make provision by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other. Clauses 64 and 65 provide for the vacation of one of the seats when a person is elected to both Houses of Parliament or when a person who is already a member of one House is elected to the other House of Parliament.

*Clause 66* provides for the vacation of all but one of the seats when a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.

*Clauses 71 to 73.*—These provisions are based on the provisions as to election expenses contained in the Government of India (Provincial Elections) (Corrupt Practices and Elections Petitions) Order, 1936. The maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with election have been left to be prescribed by rules.

*Clause 76* provides for the presentation of an election petition to the Election Commission, and not to the President or the Governor or Rajpramukh of a State as has been the practice hitherto. Under the Government of India Act, 1935, the Governor-General or the Governor was authorised to appoint an Election Commission to determine any election dispute but article 324 of the Constitution authorises the Election Commission constituted under that article to appoint Election Tribunals for the decision of doubts and disputes arising out of or in connection with an election. It has therefore been considered necessary to provide for the presentation of an election petition to the Election Commission.

*Clause 81* provides for the appointment of Election Tribunals. A departure from the existing practice has been made in this clause. Hitherto, every Election Tribunal appointed to inquire into an election petition consisted of three members. It is proposed in this clause that the Election Tribunal to be appointed by the Election Commission shall consist of two members, of whom one, the Chairman, shall be a District Judge to be selected by the Election Commission from list of judicial officers of not less than 10 years' standing to be maintained by the Commission in consultation with the High Courts of various States, and the other member shall be either a judicial officer selected by the Election Commission from these lists or an advocate with not less than 10 years' practice selected by it from similar lists maintained for the purposes in consultation with the High Courts. Provision has been made in clause 89 that in case of difference of opinion among the members of the Tribunal, there would be a reference to the High Court.

*Clauses 85 to 92* lay down the procedure to be followed at the trial of an election petition. These provisions are based generally on the existing provisions on the subject contained in the various electoral rules and the Indian Elections Offences and Inquiries Act, 1920 (XXXIX of 1920).

*Clauses 93 and 94* provide for the final order by the Tribunal at the conclusion of the trial of an election petition. Under the existing procedure at the conclusion of the inquiry into an election petition the Commissioners are required to report

to the President or to the Governor about their finding and thereupon the President or the Governor is required to issue orders in accordance with the report and to publish the report in the Gazette. This seems to be hardly necessary. It has therefore been provided that at the conclusion of the trial of an election petition the Tribunal shall make the necessary order either dismissing the petition or declaring the election of the returned candidate to be void or declaring the petitioner or any other candidate to have been duly elected or declaring the election to be wholly void and, where any charge of any corrupt or illegal practice has been made, record the necessary finding with regard thereto and also make order as to costs.

*Clause 95* lays down the grounds on which an election may be declared to be wholly void, and also the grounds on which the election of a returned candidate may be declared void, and is based on the corresponding provisions contained in the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936. A distinction has however been made between the cases in which the election will be declared to be wholly void and in which the election of a returned candidate will be declared void. Item (b) of sub-clause (1) of this clause is new. It may be also noticed that the improper acceptance or rejection of any nomination has been mentioned as a ground for declaring the election to be wholly void only in the case of first elections, and not in the case of any other elections, in view of the provisions contained in *clause 35* as to appeals from the decisions of Returning Officers accepting or rejecting any nomination paper in the case of all elections other than the first elections. It may be further noticed that this clause contains references both to corrupt practices and illegal practices. A distinction has been made in the Bill between corrupt practices and illegal practices. In the U. K., Canada, Australia and the Irish Free State, this distinction is maintained in all electoral laws. A corrupt practice differs materially from an illegal practice. In the former a corrupt intent is essential whereas in the latter what has to be ascertained is whether the act done is forbidden by law. In India, hitherto, there has been no distinction between corrupt practices and illegal practices in our electoral laws. In fact what are termed as illegal practices under the Commonwealth laws have also been included in the list of corrupt practices annexed to our existing electoral laws. Thus the corrupt practices specified in Part III of the First Schedule to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, are really illegal practices under the U. K. law, for the acts specified therein are forbidden, whether or not they are done with a corrupt intent.

*Clause 96* lays down the grounds on which a candidate other than the Returned candidate may be declared to have been elected.

*Clause 97* is new. It is based on section 122(8) of the U.K. Representation of the People Act, 1949. This provision will enable the Election Tribunal, in the case where on a scrutiny or recount of the votes at the trial of an election petition an equality of votes is found to exist between any candidates, to determine by lot which of the candidates will be declared elected.

*Clause 99* provides for a reference to the High Court in case of difference of opinion among the members of a Tribunal. Such a reference will be made at the conclusion of the trial of an election petition and on receipt of the opinion of the High Court the Tribunal will pass orders in accordance with such opinion.

*Clauses 103 to 111* provide for the withdrawal and abatement of, and substitution of parties to, an election petition and follow closely the existing rules on the subject with the modification that the powers which are exercisable under

those rules by the President or Governor or Rajpramukh would be exercised under these clauses by the Election Commission.

*Clauses 112 to 117* make provisions for costs which may be awarded by the Tribunal on the trial of an election petition and also for the taking of security for such costs and the recovery of such costs.

*Clause 116* provides for the payment of costs out of security deposits and for the return of the balance of security deposits after payment of costs, if any. When costs have been awarded, a period of six months has been prescribed under this clause for the making of an application for the recovery of such costs out of the security deposits and, if no application is made within that period, the security deposit would be liable to be returned to the petitioner after the expiry of that period.

*Clause 117* which lays down the procedure as to the execution of orders as to costs is based on section 12 of the Indian Election Offences and Inquiries Act, 1920. It has however been provided in this clause that no application for execution of any order for costs shall lie within a period of six months from the date of publication of such order under clause 101 unless it is for the recovery of the balance of any such costs which could not be realised out of the security deposits owing to the insufficiency of the amount of such deposits to meet the total costs.

*Clause 118* reproduces the corrupt practices set out in Part I of the First Schedule to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, with the addition of two items, namely, the items specified in sub-clauses (6) and (8) of that clause. The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent for the conveyance of any voter to or from any place for the purpose of recording his vote has been made a corrupt practice under sub-clause (6). Such a practice is an illegal practice under the U.K. Representation of the People Act, 1949. It has, however, been made clear by the addition of a proviso to that sub-clause that the hiring of a vehicle or vessel by a voter or by several voters at their joint cost for the purpose of conveying him or them to or from the polling station will not be deemed to be a corrupt practice under that sub-clause. A definition of "vehicle" has been also added to that sub-clause for the sake of clarity. The obtaining or procuring, or abetting, or attempting to obtain or procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person has been also made a corrupt practice under sub-clause (8) of this clause.

*Clause 119* reproduces the corrupt practices set out in Part II of the First Schedule to the aforesaid Order with the addition of one item, namely, the item specified in sub-clause (5) of that clause. The use of or appeal to religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the election of a candidate has been made a corrupt practice under the said sub-clause for the sake of ensuring fair elections.

*Clause 120* contains a list of illegal practices. The items mentioned in this clause are the same as those mentioned in Part III of the First Schedule to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936.

*Clauses 121 to 133* deal with certain offences with respect to elections. It may be pointed out that Chapter IX-A of the Indian Penal Code already contains provisions for punishment for the corrupt practices of bribery, undue influence and personation at elections. "Bribery", "undue influence" and "personation" as defined in the said Chapter do not differ materially from the descriptions of such practices contained in clause 118 of the Bill which have been reproduced from Part I of the First Schedule to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, and from the electoral rules which have been in force since 1921. The said Chapter IX-A also contains provisions for punishment for false statements and for illegal payments in connection with an election and for failure to keep election accounts. It has, therefore, been considered unnecessary to include in this Bill any provision for punishment for the corrupt practices and other electoral offences already dealt with in the Indian Penal Code. Further, it would not be possible to omit those provisions from the Indian Penal Code and include them in this Bill, as they apply not only in relation to an election to Parliament, or to the Legislature of a State, but also to every other kind of election, such as, election to Municipalities, District Boards and other local authorities. Accordingly, only provisions with regard to certain other electoral offences have been included in these clauses. These provisions are based mostly on similar provisions contained in the U. K. Representation of the People Act, 1949. The provision contained in the Indian Elections Offences and Inquiries Act, 1920, with regard to maintenance of secrecy of voting at elections has been also included.

*Clause 133* seeks to make certain amendments in the Code of Criminal Procedure, 1898, with a view to make the offence of "personation" at elections a cognizable offence. The offence of personation at an election mentioned in section 171-F of the Indian Penal Code is not cognizable offence under the Code of Criminal Procedure, 1898, and under section 195 of that Code no court shall take cognizance of any such offence unless some complaint is made by or on behalf of, or under authority from, the State Government or some officers empowered by the State Government in this behalf. It appears that the States of Punjab and Madhya Pradesh have already amended the Code of Criminal Procedure, 1898, in its application to those States so as to make the offence of personation at elections mentioned in the said section 171-F a cognizable offence. Similar amendments have been suggested by this clause in the said Code so that the offence of personation at elections may be made a cognizable offence in all the States.

*Clauses 134 to 139* which deal with disqualifications for membership and voting are based on the corresponding provisions contained in Part IV of, and the Second Schedule to, the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936. It may be noticed that a distinction has been made between corrupt practices and illegal practices for the purpose of the disqualifications prescribed in these clauses. Illegal practices referred to in these clauses are really the same as the corrupt practices which were specified in Part III of the First Schedule to the said Order.

*Clause 141* reproduces the provisions as to disqualifications contained in section 18 of the Indian Elections Offences and Inquiries Act, 1920.

*Clauses 142 to 145.*—It may be noticed from these clauses that as in the case of a general or biennial election, so on the occurrence of a casual vacancy the President in the case where such vacancy occurs in the Council of States or the House of the People, and the Governor or the Rajpramukh in the case where such vacancy occurs in a State Legislative Assembly or a State Legislative

Council. will call upon the constituency concerned or the members of the Legislative Assembly of the State concerned, as the case may be, to elect a person for the purpose of filling the vacancy so caused within such time as may be appointed in this behalf by the Election Commission. It has also been provided that where the vacancy is in a reserved seat, it shall be filled by a person belonging to the scheduled castes or the scheduled tribes according as the seat is reserved for such castes or for such tribes.

*Clause 146* provides for the maintenance of a list of members of each State Assembly. This list will serve the purpose of electoral rolls in the case of elections by the members of the Legislative Assembly of the State to fill seats in the Council of States and in the Legislative Council of that State.

*Clause 147* provides power for extending the time appointed by the Election Commission for completing any general or biennial election or any bye-election. It also provides for the making of necessary amendments in the notification issued by the President or the Governor or the Rajpramukh in respect of an election in consequence of extension of the time originally appointed for the completion of such election.

*Clauses 148 to 151* provide for the term of office of members of the Council of States and the State Legislative Councils and the commencement of such term. These provisions are necessary in view of the periodical retirement of the members of the Council of States and of the State Legislative Councils provided for in articles 83(1) and 172(2). In the proposed Bill to amend the Representation of the People Act, 1950, the intention is to provide that the seat allotted to the States of Manipur and Tripura in the Council of States shall be filled every two years by the nomination of a representative from the State of Manipur and from the State of Tripura by rotation, and that the seat allotted to the States of Ajmer and Coorg in that Council shall be filled by rotation by holding election every two years in the State of Ajmer and in the State of Coorg, and it has accordingly been suggested in clause 148 that the term of office of each member so nominated or elected shall be two years.

*Clauses 153 to 160* provide for the power to requisition any premises for the purpose of being used as a polling station or for the storage of ballot boxes and also the power to requisition any vehicle, vessel or animal for the transport of ballot boxes to or from any polling station or for the transport of the members of the police force for maintaining order during the conduct of an election or transport of any officer or other person for the performance of any duty in connection with an election. The procedure for requisitioning prescribed in these clauses is based on similar provisions contained in the Defence of India Rules.

*Clause 162* bars the interference of civil courts with regard to any action taken or decision given by the Returning Officer or any other person appointed in connection with an election.

*Clause 163* seeks to repeal the Indian Elections Offences and Inquiries Act, 1920. All the provisions of this Act are being re-enacted in this Bill and so it is unnecessary to retain that Act. A proviso has, however, been added to this clause so as to continue the application of this Act in relation to any election to fill any casual vacancy referred to in clause (1) or clause (2) of article 388 of the Constitution or any inquiry in respect of such election by an Election Tribunal appointed in that behalf by the Election Commission.

BILL\* No. 107 of 1950

*A Bill further to amend the Coal Mines Safety (Stowing) Act, 1939.*

BE it enacted by Parliament as follows:—

**1. Short title.**—This Act may be called the Coal Mines Safety (Stowing) Amendment Act, 1950.

**2. Amendment of section 5, Act XIX of 1939.**—In section 5 of the Coal Mines Safety (Stowing) Act, 1939, for the words "three annas" the words "nine annas" shall be substituted.

### STATEMENT OF OBJECTS AND REASONS

The maximum rates of excise duty permissible at present under section 5 of the Coal Mines Safety (Stowing) Act, 1939 (XIX of 1939) are annas three per ton on coal and soft coke and annas four and a half per ton on hard coke, and these rates are actually being levied. The income derived from the duty is utilized mainly for the grant of assistance to collieries for stowing operations and partly for research work relating thereto. The income of the Board, as derived from the duty, has recently been found quite inadequate to meet the cost of stowing operations on a sufficient scale, and it is considered that any reduction in the rate of assistance granted would seriously affect safety in mines. It is, therefore, urgently necessary to augment the Board's income; and it is proposed that the maximum rates of excise duty permissible under the Act, which were prescribed in 1939 when the price of coal was less than one-fourth its present price, should be increased to thrice the existing rates. The existing rates will not be increased to the maximum immediately but will be enhanced as circumstances necessitate.

N. V. GADGIL.

NEW DELHI;

*The 12th December, 1950.*

M. N. KAUL,  
*Secretary.*

\*The President has, in pursuance of clause (1) of article 117 of the Constitution of India, recommended to Parliament the introduction of the Bill.



